109-725

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 153.

ISOLINA E. HOWARD, APPELLANT,

vs.

ADELAIDE SOPHIA CARUSI, JOHN McLEAN CARUSI, PHILLIPPE ESTELLE CAULFIELD, SAMUEL POLLANDO CARUSI, THORNTON CARUSI, AND GENEVIEVE E. CARUSI.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 18, 1883.

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1 *Original bill.—Filed Feb'y* 1, 1878.

In the supreme court of the District of Columbia, the day of , 1878. In equity.

ISOLINA E. HOWARD, PLAINTIFF, *vs.* ADELAIDE SOPHIA CARUSI, JOHN MCLEAN CARUSI, Philipa Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi, defendants.	6078. 18.	Equity docket

To the honorable the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff complains and says as follows:

First. That she is a resident of the city of Baltimore, in the State of Maryland; that her maiden name was Isolina E. Carusi; that she intermarried with Robertson Howard, and that she sues in this cause in her own right as one of the nieces of the late Lewis Carusi, and daughter of the late Samuel Carusi, both deceased.

2 Second. That the defendants Adelaide Sophia Carusi and Genevieve E. Carusi are residents of the city of Baltimore, in the State of Maryland, the defendants John McLean Carusi, Philipa E. Caulfield, and Thornton Carusi are residents of the city of Washington, in the District of Columbia, and the defendant Samuel Pollando Carusi, is a resident of the city of San Francisco, in the State of California.

Third. That Lewis Carusi, late of the city of Washington, in the District of Columbia, now deceased, was in his life-time seized and possessed of the following real estate in the city of Washington and District of Columbia, that is to say, of all those certain pieces and parcels of ground situate, lying, and being in said city of Washington and known and described as being part of lot No. fourteen (14) in square No. three hundred and seventeen (317), beginning for the same at the southeast corner of said lot and running thence fourteen (14) ft. north, thence seventy (70) west, thence fourteen (14) ft. south and thence seventy (70) ft. east to the place of beginning; also part of lot No. one (1) in said square, beginning for

3 the same at the northeast corner and running thence south three (3) ft., thence west fifty (50) ft., thence north three (3) ft., thence east fifty (50) ft. to the place of beginning, in all, one hundred and fifty (150) square ft.; also part of lot No. two (2) in this said square, beginning for the same at the northwest corner of said lot and running thence south twenty-one (21) ft., thence east thirty (30) ft. and one (1) inch, thence north twenty-one (21) ft., thence west thirty (30) ft. and one (1) inch to the place of beginning; the east half of lot No. three (3) in square No. three hundred and twenty-four (324); part of square No. three hundred and forty-nine (349), beginning for the same at the southwest corner of said square and running thence with the line of Eleventh (11th) street west one hundred and thirty-five (135) ft. and four (4) inches to the dividing line of lots five (5) and (6) in said square, thence with said dividing line east sixty-four (64) ft., thence south one hundred and thirty-five (135) ft. and four (4) inches to North C street, and thence with the line of said last-

named street west sixty-four (64) feet to the place of beginning; part of lot No. five (5) in said square, beginning for the same at the northeast corner of said lot and running thence westwardly along the north line
4 of said lot No. 5 thirty-five (35) ft. ten and a half (10½) inches, thence southwardly parallel to the east and west line of said lot twenty-one (21) ft., thence eastwardly parallel with the north line of said lot thirty-five (35) ft. ten and a half (10½) inches to the rear and east line of said lot twenty-one (21) ft. to place of beginning; also the east thirty-five (35) ft. ten and a half (10½) inches, fronting North C street, of lot No. three (3), and running with that width through the whole depth of the said lot, and fourteen (14) ft. and four (4) inches into lot No. five (5) in said square No. three hundred and forty-nine; and also lot No. three (3) of Machiss' subdivision of original lots No. one (1) and two (2) in said square No. three hundred and forty-nine (349); also lot No. four (4) of the subdivision in said square No. three hundred and forty-nine (349); also lots No. five (5), six (6), and seven (7) in square No. three hundred and fifty (350); also lot No. eight (8) in said square No. three hundred and fifty (350); said lot fronting fifty (50) ft. and one (1) inch on North C street and having a depth of seventy-eight (78) ft., and containing three thousand nine hundred and six and a half (3,906½) superficial ft.; and being so seized and possessed did, on the 18th day of March, 1872, by his will dated
5 that day, devise all of his said real estate to Samuel Carusi, in words following, that is to say:

"And as to all my property, real, personal, and mixed, after payment of just debts, etc., I give, devise, and bequeath the same to my brother Samuel Carusi to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may answer for his comfortable support and maintenance, and at his death the same, or so much thereof as the said Samuel Carusi shall not have disposed of by devise or sale, shall descend to my three beloved nieces, Philipa Estelle Caulfield née Carusi, Genevieve E. Carusi, and Isolina E. Carusi, as follows. To the said Philipa Estelle Caulfield the sum of five thousand dollars ($5,000), the remainder of my estate to be divided between the said Genevieve E. Carusi and Isolina E. Carusi, to share and share alike as tenants in common and not as joint tenants, so that they, and they alone, shall have the right to have, possess, use, and enjoy the same separate and apart and independent of any husband either one of them may have at the time of my death
6 or at any time hereafter, and so he or they shall have no right, privilege, or power to control or interfere with any part of my said estate in any manner whatsoever, and so that the same shall not be subject or liable to any debt that any such husband may have incurred"—as by reference to a copy of the will hereto annexed and marked "Exhibit A."

Exhibit A.—Filed Oct. 22, 1878.

In the name of God. Amen.

I, Lewis Carusi, residing in the city of Washington, in the District of Columbia, being of sound and disposing mind and understanding, but feeble in body, and knowing the uncertainty of life and the certainty of death, for the purpose of directing the manner in which the estate, which it has

pleased God to bless me, shall be disposed of after my decease, do make, publish, and declare this as my last will and testament, hereby revoking all wills and testaments heretofore made by me.

Imprimis: My will is that all my just debts and funeral charges shall by my executor hereafter named be paid out of my personal estate as soon after my decease as shall by him be found convenient.

7 Second. And as to all my property, real, personal, and mixed, after the payment of my just debts and funereal charges as aforesaid and the payment of the legacies hereinafter mentioned, I give, devise, and bequeath the same to my brother Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not demimish the same to a greater extent than may be necessary for his comfortable support and maintenance, and that at his death the same, or so much thereof as he, the said Samuel Carusi, shall not have disposed by devise or sale, shall descend to my three beloved nieces, Phillippa Estelle Caulfield, née Carusi, Genevieve E. Carusi, and Isolina E. Carusi, the daughters of my said brother Samuel Carusi, as follows: To the said Phillippa Estelle Caulfield née Carusi the sum of five thousand dollars ($5,000), the remainder of my estate to be devided between Genevive E. Carusi and Isolina E. Carusi, to share and share alike as tenants in common and not as joint tenants, and so that they, and they alone, shall have the right to have, possess,

8 use, and enjoy the same separate and apart from and independent of any husband either one of them may have at the time of my decease or at any time thereafter, and so that he or they shall have no right, privellege, or power to control or interfere with any part of my said estate in any manner whatsoever, and so that the same shall not be subject or liable to any debt that any such husband may have incurred.

I further hope, trust, and desire that in the event either one of my said nieces, daughters of the said Samuel Carusi, shall not survive my said brother Samuel, that the share she might become entitled to had she survived him may be conferred and fall to the surviving niece or nieces. In no event shall any portion of my estate be subject to the control or interference of any husband either one of my said neices may have at the time of my decease or at any time thereafter.

I give and devise to my three nieces, daughters of my brother Nathaniel Carusi, the sum of two thousand dollars ($2,000).

Lastly, I do nominate and appoint my said brother Samuel Carusi to be the sole executor of this my last will and testament.

9 In testimony whereof I, the said Lewis Carusi, have to this my last will and testament, contained on one sheet of paper, here subscribed my name and affixed my seal this eighteenth day of March, in the year of our Lord eighteen hundred and seventy-two,

LEWIS CARUSI. [SEAL.]

The above instrument of one sheet was at the date thereof declared to us by the testator, Lewis Carusi, to be his last will and testament; and he then acknowledged to each of us while in presence of him and each other

that he had subscribed the same, and we, at his request and in his presence, and in presence of each other, sign our names hereto as attesting witnesses.

A. GREEN, residing at .
CH'S MCNAME, residing at .
JACOB DYSER, residing at .

A true copy. Test:
[SEAL.]

A. WEBSTER,
Register of Wills.

And which it is prayed may be read and considered as part of plaintiff's bill, will more fully and at large appear.

10 That after the death of said Lewis Carusi said last will and testament was by Samuel Carusi, deceased, duly and formally propounded for probate in the office of the register of wills in the District of Columbia; that a caveat was filed against the probate thereof, and said last will was not then and has never since been duly and formally proved and regularly filed in the office of the register of wills of the said District of Columbia.

Fourth. That on the 18th day of July, 1872, said Lewis Carusi executed and acknowledged in due form a deed of trust, in which he conveyed all of his said real estate, by full and proper description, to said Samuel Carusi, in trust, to manage the same during the life-time of him, the said Lewis Carusi, with full power to sell said real estate and to invest the proceeds arising from any such sale in securities, which securities were to be held by him in trust for said Lewis Carusi during his life-time; and in further trust, upon the death of him, the said Lewis Carusi, to convey the said real estate so unsold, or said securities so purchased, to such

11 persons as he, the said Lewis Carusi, may by his last will and testament, or other paper writing in the nature of a will, signed with his name and seal and witnessed by two (2) witnesses, designate as his devisees, meaning, as plaintiff is advised and believes, the will theretofore made and hereto annexed and marked "Exhibit A" and made part of this bill, and which she is further advised and believes, and so believing alleges, did sufficiently designate the persons to whom the said real estate of the said Lewis Carusi was to be conveyed; and the plaintiff is further advised and believes that by the said deed of trust and last will of said Lewis Carusi she and the other devisees so designated by the last will and testament are fully entitled to such a conveyance of the said real estate upon the terms and provisions of said last will and testament of Lewis Carusi. That said deed of trust, when thus executed and acknowledged in due form as aforesaid, was duly and properly delivered to said Samuel Carusi; that the same was afterwards seen in the possession of said Samuel Carusi, and was read to him, and in his presence and in the presence of another witness, and its provisions duly considered and discussed,

12 when it was determined that it would not effect the purpose defendants desired to attain, namely, to empower said Samuel to sell the real estate thereby conveyed and make use of the proceeds of such sale as they, defendants, might see fit, and, consequently, that said deed of trust was never placed upon the land records of the District of Columbia, but was carefully and, as plaintiff believes and alleges, purposely, and with a

view to deprive her and the other devisees in the last will of said Lewis Carusi of the rights acquired by them under the said deed of trust, suppressed; that such suppression was made after due consideration and after said Samuel Carusi had been advised that under the terms of the said deed of trust he took limited powers only over the estate of the said Lewis Carusi, and that the estate itself belonged of right to the parties to whom said Lewis Carusi had devised the same by his said last will and testament.

Fifth. That on the 17th day of October, 1872, said Lewis Carusi did make, execute, and acknowledge, in due form, another and further deed, by which he conveyed his said real estate to the said Samuel
13 Carusi, reserving thereof to himself an estate for his life; that this said last-mentioned deed is an absolute deed in fee-simple, and, subject to the reservation as aforesaid, conveys the entire real estate of the said Lewis Carusi to the said Samuel Carusi; that said deed was duly delivered and recorded among the land records of Washington County, in the District of Columbia, on the 4th day of November, 1872, in liber 697, one of said records, folio 360, etc., and a certified copy is hereto annexed and marked "Exhibit B."

Exhibit B.—Filed Oct. 22, 188 .

Louis Carusi to Samuel Carusi. Deed. Recorded November 4th, 1872—11.30 a. m. Liber 697, folio 360.

This indenture, made the seventeenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Louis Carusi, of the city of Washington, in the District of Columbia, of the first part, and Samuel Carusi, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars ($1,000), in lawful money of the United States, to him in hand paid by the said party of the second part, at and before
14 the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns forever, all those certain pieces or parcels of ground situate, lying, and being in the said city of Washington, and known and described as being part of lot numbered fourteen (14) in square numbered three hundred and seventeen (317), beginning for the same at the southeast corner of said lot and running fourteen (14) feet north, thence seventy (70) feet west, thence fourteen (14) feet south, and thence seventy (70) feet east, to the place of beginning; also part of lot numbered one (1) in said square, beginning for the same at the northeast corner and running thence south three feet, thence west fifty (50) feet, thence north three (3) feet, and thence east fifty (50) feet, to the place of beginning, containing one hundred and fifty (150) square feet; also part of lot numbered two (2) in the said square, beginning for the same at the northwest corner of said lot and running thence south twenty-one (21) feet, and thence west thirty (30) feet and one (1) inch, to the place of beginning, being
15 the same which were conveyed to said party of the first part, by two

certain deeds duly recorded in liber N. C. T. No. 44, folio 83, &c., and D, No. 8, folio 87, &c., of the land records for said District of Columbia. Also the east half of lot numbered three (3) in square numbered three hundred and twenty-four (324), being the same conveyed to said party of the first by a certain deed duly recorded in liber J. A. S. No. 56, folio 176, &c., of said land records; also part of square three hundred and forty-nine (349), beginning for the same at the southwest corner of said square, and running thence to the line of Eleventh (11th) street west, one hundred and thirty-five (135) feet and four inches to the dividing line of lots numbered five (5) and six (6) in said square, thence with said dividing line east sixty-four (64) feet, thence south about one hundred and thirty-five (135) feet four (4) inches to North C street, and thence with the line of said last-mentioned street west sixty-four (64) feet, to the place of beginning; also part of lot numbered five (5) in said square, beginning for the same at the northeast corner of said lot, and running thence westwardly along the north line of said lot thirty-five (35) feet and ten and a half (10½) inches, thence southwardly parallel to the east and west line of said lot
16 twenty-one (21) feet, thence eastwardly parallel with the north line of said lot thirty-five (35) feet and ten and one-half (10½) inches to the rear or east line of said lot, and thence northwardly along the east line of said lot twenty-one (21) feet to the place of beginning; also the east thirty-five (35) feet ten and one half (10½) inches fronting on North C street of lot numbered three (3), and running with that width through the whole of said lot and fourteen (14) feet and four (4) inches into lot numbered five (5) in said square numbered three hundred and forty-nine (349); and also lot numbered three (3) of Machies' subdivision of original lots numbered one (1) and two (2) in said square numbered three hundred and forty-nine (349); and also lot numbered four (4) of the subdivision in said square numbered three hundred and forty-nine (349), and being the same conveyed to said party of the first part by certain deeds duly recorded in liber W. B. No. 18, folio 591, &c.; W. B. No. 74, fol. 262, &c.; W. B. No. 116, folio 164; J. A. S. 142, folio 316, &c.; D. No. 5, folio 399 of the land records. Also lot numbered five (5) in square numbered three hundred and fifty (350); also lots numbered six (6) and seven (7) *and* said square numbered three hundred and fifty (350); and also lot numbered
17 eight (8) in said square numbered three hundred and fifty (350), said lot fronting fifty (50) feet and one (1) inch on North C street, and having a depth of seventy-eight (78) feet and containing three thousand nine hundred and six and a half (3,096½) superficial feet, and being the same which were conveyed to said party of the first part by certain deed duly recorded in libers J. A. S., No. 13, fol. 34; J. A. S. No. 25, folio 112 & 109; J. A. S. No. 160, folio 81, of said land records. Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, claim, either at law or in equity or otherwise however, of the party of the first part of, in, to, or out of the said pieces or parcels of ground and premises. To have and to hold the said several pieces or parcels of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, forever. Reserving to the said party of the first part, nevertheless, the right and power to receive and dispose *if* in any manner he pleases and as may suit his convenience, the rents, issues, and profits of the herein*after* described real estate

during his life, it being the intention of the grantor in this deed to re-
18 tain control of the possession and use and profits of said real estate so long as he shall live, and this deed of conveyance shall not take full effect until he, the said Louis Carusi, shall depart this life.

In testimony whereof the said party of the first part hath hereunto set his hand and seal the day and year first hereinbefore written.

LOUIS his + mark CARUSI. [SEAL.]

Signed, sealed, and delivered in the presence of and witnessed his mark—

CHARLES WALTER.
JAMES S. C. ROWLAND.
WINFIELD S. FLETCHER.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Charles Walter, a notary public in and for the county aforesaid in the said District, do hereby certify that Louis Carusi, party to a certain deed bearing date on the 17th day of October, A. D. 1872, and hereto annexed, personally appeared before me in the county aforesaid, the said Louis Carusi being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 17th day of October, A. D. 1872.

[NOTARIAL SEAL.] CHARLES WALTER,
Notary Public.

19 And prayed to be taken as part of this bill.

Sixth. That said last-mentioned deed was made by said Lewis Carusi a few days before his death, when he was very feeble and incapable by reason thereof to sign his name thereto, and when he was, by reason of the condition of his mind, which at that time was greatly impaired and enfeebled by illness, incapable of understanding the purport of said deed, or to execute or acknowledge the same in a proper manner; that plaintiff is informed and believes, and so believing avers and charges, that said Lewis Carusi was procured to execute and acknowledge and deliver said last-mentioned deed by the said Samuel Carusi and others aiding and assisting him, owing to the belief fostered by him and them in his, said Lewis Carusi's, mind that said deed would more effectually carry out the disposition theretofore made by him by the said last will and testament, and by the said deed of trust hereinbefore referred to as executed by the said Lewis Carusi of his entire real estate, and because of the promises frequently before that time made to him, the said Lewis, by him, the said Samuel,
20 that he, the said Samuel, would carry into effect and execute, in any and all events, the trusts in the said will and said deed of trust created for the benefit of plaintiff and his, said Lewis Carusi's, other nieces.

Seventh. Plaintiff, further complaining, shows that in point of fact at the time said last-mentioned deed was made by said Lewis Carusi, as pretended, said Lewis Carusi had no legal title to said real estate, having divested

himself thereof by the deed of trust dated July 18th, 1872; that he was by illness and great infirmity of mind and body incapable of making such a deed, and plaintiff avers and charges that he was procured to make said deed by Samuel Carusi, for whose benefit it is made; that said Samuel Carusi had already been created a trustee for the purpose of conveying said real estate to the plaintiff and other devisees under will of March, 1872, under a deed of trust to him from said Lewis Carusi, hereinbefore set forth, conveying to him the same property; and plaintiff is advised, and so charges, that it was in itself a fraud and in derogation of the rights of plaintiff and others interested therein for him, said Samuel Carusi,
21 to procure and assist said Lewis Carusi in making said last-mentioned deed, which upon its face is absolute, and which, if maintained, will put an end to and destroy said trusts in favor of plaintiff, and that on all these accounts said deed should of right be set aside and declared null and void for fraud.

Eighth. That Lewis Carusi died on the 25th day of October, 1872, leaving no other will or paper writing purporting to be or in any way in the nature of his last will and testament than the will hereto annexed and made part of this bill and marked "Exhibit A."

Plaintiff is advised and believes, and so believing charges, that the said will fully designates the beneficiaries of the trusts created by said Lewis Carusi in and by the said deed of trust of the 18th of July, 1872, hereto annexed as an exhibit of this bill and made part thereof.

Ninth. Plaintiff, further complaining, charges that said Samuel Carusi, in violation of the trust reposed in him in and by said last will and testament of the said Lewis Carusi and the said deed of trust made in
22 manner aforesaid, with a view to defeat the provisions of said will and said trust created by said deed, did during his life-time suppress said deed of trust at all times, and until the day of his death, claiming an absolute fee-simple title to all said Lewis Carusi's estate under said last will and testament and said pretended absolute deed of conveyance, denying that said deed of trust was ever delivered to him, or to any one for him, by said Lewis Carusi, and claiming that the same was void and of no effect, and that in spite of said will and said deed of trust no one save himself had any right to any portion of the estate of the said Lewis Carusi so devised and conveyed as herein set out, all of which several actings and doings plaintiff is informed and believes were in bad faith, and in violation of right, equity, and good conscience.

Tenth. That after the death of said Lewis Carusi and after said last will and testament had been propounded for probate and a caveat as aforesaid duly filed against said probate (no further action being taken with reference to said will in the orphans' court of the District of Co-
23 lumbia) proceedings were instituted on the equity side of the supreme court of the District of Columbia for the purpose of having said last will and testament of said Lewis Carusi set aside and declared void and of no effect; that to the bill filed in such proceedings, full and complete answers were made by the said Samuel Carusi, testimony was taken and other proceedings had, such as are usual in such cases; that no decree was made in said cause but all matters in controversy therein were compromised and settled between the parties thereto, said Samuel Carusi agreeing to bind himself to pay to certain parties claiming rights in the

estate of said Lewis Carusi the amounts so claimed by them, all of which more fully and at large will appear by reference to said proceedings in cause No. 3012, equity docket 12 of this court, and to liber 834, one of the land records of the District of Columbia, folio 432, H. C., all of which it is prayed may be taken and read as part of plaintiff's bill.

Eleventh. That said Samuel Carusi took possession of the estate of the said Lewis Carusi during the life-time of said Lewis Carusi, and from that itme after the death of the said Lewis Carusi up to the time of the
24 death of him, the said Samuel Carusi, treated said estate as his own without reference to the trusts hereinbefore mentioned and without reference to any rights that might belong to the plaintiff or to the other parties mentioned in said will and deed of trust, and received and appropriated the rents, issues, and profits arising from said estate to his own use, created incumbrances thereon, and as plaintiff is informed and believes made sales of portions thereof and in every other way used and treated the said as if it were absolutely his.

Twelfth. That said Lewis Carusi, in his last will and testament, couples with the devise of his said real estate a desire and trust that his said Samuel Carusi will so use the same as not to diminish it in value beyond the sum necessary for the support of him, said Samuel Carusi, during his life-time; that plaintiff is advised that beyond the amount so necessary for the support and maintenance of the said Samuel Carusi the profits of the estate were to be accumulated for the benefit of her and the other devisees under the said will, in and by the provisions contained and set forth in the deed of trust hereinbefore referred to; that said Samuel Carusi was at the time of the death of the said Lewis Carusi
25 greatly advanced in years and wholly unfitted to manage and control so large an estate; that in fact the whole management and control of said estate was placed in the hands of the defendant Thornton Carusi, who collected the rents, issues, and profits, and from time to time made remittances or payments to the said Samuel Carusi; that the plaintiff believes, and so believing alleges, that the said Thornton Carusi never made any account of these collections to the said Samuel Carusi during his life-time, and that large amounts of the said rents, issues, and profits still remain in the hands of the said Thornton Carusi unaccounted for; that the amount of said rents, issues, and profits was very large and very much greater than was necessary for the maintenance and support of the said Samuel Carusi, and that the same was not expended in and about his maintenance and support, but have been retained in the hands of said Thornton Carusi, and that he still holds the same; that under the provisions of said last will and testament of Lewis Carusi and said deed of trust said Samuel Carusi was required immediately upon the death of
26 Lewis to convey the entire real estate of said Lewis to the plaintiff and the other devisees named in said will, and she is advised that from the time of the death of said Lewis said estate is to be regarded as belonging to her and the said other devisees, and that said Thornton Carusi may be compelled by order of this court to account for all of the rents, issues, and profits of said estate received by him since the death of the said Lewis Carusi.

Thirteenth. That said Samuel Carusi had no estate of his own and no property whatever, except what was devised to him under said last will

and testament of said Lewis Carusi and the aforesaid deed of trust from Lewis Carusi to him and the pretended absolute deed to which reference has been made; that on the twenty-second day of December, 1877, he departed this life, having by his last will and testament, executed in due form for the purpose of passing real estate in the District of Columbia, on the day of , 1877, devised and bequeathed all of his estate, real, personal, and mixed, to certain parties in the said will mentioned and particularly set forth; that said plaintiff believes that said Samuel
27 Carusi meant and intended by said last will and testament to devise and bequeath in manner set forth the real estate belonging to said Lewis Carusi, and which he, said Samuel, supposed had been conveyed to him by the said last will and said several conveyances hereinbefore mentioned; that said last will and testament of said Samuel Carusi has been propounded for probate and will be duly recorded among the land records in the office of the register of wills in the District of Columbia.

Fourteenth. That plaintiff is advised that said Samuel Carusi had no estate in the property belonging to said Lewis Carusi which he could dispose of in his said last will and testament in manner as aforesaid or in any other way or by any other paper writing so as to divest the plaintiff or her sisters of their rights under the last will and testament of said Lewis Carusi and the said deed of trust, and that said Samuel Carusi was only a trustee to hold said property during the life-time of said Lewis Carusi, and upon trust to convey the same, upon the death of said Lewis, to the plaintiff and her sisters in manner set forth in said deed of trust and last will
28 and testament; that she never made any effort to commence any proceedings to enforce the conveyances aforesaid during the life-time of her father, because at the time of the death of the said Lewis Carusi, her father, was very old and infirm, and in no condition to be burdened with the care and anxieties of a suit at law; that said Genevieve E. Carusi, one of the defendants hereto and the sister of plaintiff, has been at all times fully informed and advised of all and several the matters and things set forth in this bill, and has been as anxious at all times as plaintiff so to settle and arrange all matters arising and growing out thereof, as not to annoy or in any manner interfere with the comfort and happiness of their deceased father, and that with this view said plaintiff and said Genevieve E. Carusi did, about the first (1st) day of October, 1876, cause to be made in writing to the said Samuel Carusi a proposition to compromise and settle the rights of all parties legally interested without a resort to law, by effecting a conveyance of said real estate devised and conveyed as heretofore set out by the said Lewis Carusi from the said Samuel Carusi to a trustee in trust for the said Samuel Carusi during his life, and in trust after his death, to pay the legacies and bequests in the will
29 of the said Lewis Carusi mentioned, and divide the balance of the rents, issues, and profits from the said real estate after payment of all proper expenses and charges, equally between Adelaide Sophia Carusi, wife of the said Samuel Carusi, said Genevieve E. Carusi, and the plaintiff, and lastly, in trust, at the death of the said Adelaide Sophia Carusi, to convey the property to said Genevieve E. Carusi and the plaintiff in fee-simple upon the terms and conditions and in the proportions in said last will and testament of the said Lewis Carusi spe-

cifically provided and directed, and that said Samuel Carusi refused to pay any attention whatever to the said proposition, or in any way to recognize the legal rights of the plaintiff or any other persons named in said will of said Lewis Carusi or any part or portion of the said real or personal estate thereby devised.

Fifteenth. And the plaintiff further shows that the said Samuel Carusi before the death of the said Lewis Carusi, that is to say, on the first (1st) day of September, 1872, by virtue of the power conferred on him
30 by the said deed of trust, did by a deed lease for a term of five (5) years a portion of said real estate, known as the Theatre Comique, at a high rent to one L. R. Walker, and did afterwards consent to an assignment of said lease to one John C. Rodgers; that these several acts were done by said Samuel Carusi in his own name, and without reference to the said Lewis Carusi; that said lease and assignment were dated and executed on the first (1st) of September, 1872, and were recorded after the death of said Lewis Carusi, among the land records of the District of Columbia, on the 27th of November, 1872, in liber 703 of said records, while the pretended absolute deed, dated and executed on the 17th of October, 1872, is recorded on the 4th of November, 1872, in liber 697 of said records; and plaintiff further shows that since the death of said Lewis Carusi, a very large rent, that is to say, seven thousand dollars ($7,000) per annum, has been received from the rents and profits of the real estate of the said Lewis Carusi, no part of which has been devoted to the benefit of plaintiff or her sister as the parties interested in the said estate; that in the latter part of September, 1875, Samuel Carusi, with funds raised by a deed of trust upon the real estate of said Lewis Carusi, purchased a dwell-
31 ing-house in the city of Baltimore, and State of Maryland, where he ever afterwards resided and where he finally died; and plaintiff is advised that this property so purchased is to be regarded as part of the estate of the said Lewis Carusi and as such should be accounted for to them in the settlement of his said estate; that said Samuel Carusi, by his said last will and testament, appointed his widow, Adelaide Sophia Carusi, and his son, John McLean Carusi, executors of his last will and testament; that plaintiff is informed and believes that said Adelaide Sophia Carusi, by reason of her life estate created in her by the will of said Samuel Carusi, and the said John McLean Carusi, by virtue of his appointment as executor under the will of said Samuel Carusi, have taken or are about to take possession of the entire estate of the said Lewis Carusi; that said persons so mentioned are wholly incompetent to take charge of and manage such an estate; that said Adelaide S. Carusi, resides in Baltimore, in the State of Maryland, away from the said estate and has no business capacity and is wholly unfit for such a trust; that said John McLean Carusi cannot have any power over said real estate, except what is entrusted to him by the
32 said Adelaide Sophia Carusi, and that petitioner is wholly without remedy in respect to the estate of said Lewis Carusi and her interest therein so as to have the same properly managed and preserved without the intervention of this honorable court, and by the appointment of a receiver to take charge of and keep and preserve said estate under the orders of this court.

Sixteenth. And plaintiff, further complaining, says that said Lewis Carusi, her uncle, during his life-time repeatedly, and at all times when

the subject was a matter of conversation or discussion at any time, declared in the most unmistakable terms that it was his intention to leave his estate, by any testamentary disposition he should make thereof, to his nieces to the exclusion entirely of any nephews that might survive him, and to the further exclusion of the wife of the said Samuel Carusi, should she survive him, and that plaintiff believes, and so believing, avers and expects to be able to show to this honorable court that it was the intention of the said Lewis Carusi to make provision at all events for his said several nieces in preference to all persons and to every person who might by reasons
33 of affinity have any claim upon him, said Lewis Carusi, or upon his said estate.

All which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury and oppression of plaintiff in the premises.

In tender consideration whereof and forasmuch as said plaintiff is remediless in the premises at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end that the said defendants may, upon their several and respective corporate oaths, true, full, direct, and perfect answers make to the several matters hereinbefore set forth and contained, plaintiff prays your honorable court in manner and form following:

First. That the said defendant, Thornton Carusi, may, by an order of this court, be compelled to make a full and complete account of all moneys by him collected, as the agent or attorney of the said Samuel Carusi, from the tenants in occupancy of any part or portion of the estate of the said Lewis Carusi, deceased, or in any other way on the account of the
34 said Samuel Carusi, as the holder in any capacity of the estate of the said Lewis Carusi, before or since the death of the said Lewis Carusi, and what disposition he has made of such moneys, furnishing with said account complete vouchers for all disbursements by him made.

Second. That the said defendants, or such of them as have the same in his or their possession, may be compelled to produce and bring into this court the aforesaid deed of trust from the said Lewis Carusi to the said Samuel Carusi, hereinbefore particularly referred to as bearing date the day of , in order that the said deed of trust may be placed upon the land records of the District of Columbia in accordance with the law regulating such matters in this District.

Third. That the said deed of trust may by a decree of this court be declared to be of full force and effect, and that the said last will and testament of the said Lewis Carusi, or the paper writing purporting to be such, propounded by the said Samuel Carusi, and now on file in the
35 orphans' court of the District, may be decreed to be operative to designate the persons to whom the estate of the said Lewis Carusi was to go after the death of said Lewis, and to whom for all the profits and benefits arising from the said estate of the said Lewis account was to be made by the parties having the same in possession, and that a further decree may be made appointing some person, to be designated by the court, to make conveyance of the estate of the said Lewis Carusi to the plaintiff and her sister, the said Genevieve E. Carusi, in accordance with the terms of the said deed of trust and the last will and testament of the said Lewis

Carusi, or the paper purporting to be such, subject to the legacy in said will or paper aforesaid to the defendant, Phillipa Estelle Caulfield.

Fourth. That the said last will and testament of said Samuel Carusi may, by a decree of this court, be declared to be inoperative and of no effect, in so far as it attempts to devise or bequeath any part of the estate of the said Lewis Carusi, or to make any disposition thereof.

36 Fifth. That an order may be passed by this court appointing a receiver to take charge of the estate of the said Lewis Carusi, and of all property of every description of which he died seized, to the exclusion of all other persons whatsoever, and all the rents, issues, and profits thereof to take, hold, and receive subject to the further order of the court.

Sixth. That said plaintiff may have a writ of injunction restraining and enjoining the defendants, Adelaide Sophia Carusi and John McLean Carusi, their agents or attorneys, or any one for them or in their behalf, from taking charge of, or in any way or manner interfering with, the estate of the said Samuel Carusi, or of any property of which he died seized, or from receiving any rents, issues, and profits arising from or in any way growing out of the same.

Seventh. That said plaintiff may have such other and further relief, her case considered, as to the court may seem just and proper.

To which end plaintiff prays for process against the defendants, requiring them to appear and answer the exigencies of this bill.

37 The defendants are Adelaide Sophia Carusi, John McLean Carusi, Philipa Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi.

ISOLINA E. HOWARD.

I do solemnly swear that I have heard read the bill by me subscribed and know the contents thereof, and that the facts therein stated upon personal knowledge are true, and that the facts therein stated on information and belief I believe to be true.

ISOLINA E. HOWARD.

Sworn before me this 23rd day of January, 1878.

[SEAL.] G. E. LANGSTON,
Notary Public.

38 *Answer of Thornton Carusi.—Filed Mar.* 19, 1878.

In the supreme court of the District of Columbia, the day of , 1878. In equity.

ISOLINA E. HOWARD, PLAINTIFF,
against
ADELAIDE SOPHIA CARUSI, JOHN MCLEAN Carusi, Phillipa Estelle Carusi, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi, defendants.

(Special.)

Answer of the above-named defendant Thornton Carusi to the bill of complaint of the above-named plaintiff.

In answer to the said bill of complaint he says as follows:

First. He admits the allegations contained in paragraph one.

Second. He admits the allegations contained in paragraph two.

Third. He admits the allegations contained in paragraph three.

Fourth. He admits the fact that at the time stated in paragraph five the said Lewis Carusi executed and acknowledged the deed therein described; but denies that said Lewis thereby conveyed to the said
39 Samuel Carusi all or any part of his real estate; he denies that said so-called deed of trust was ever in any way delivered by said Lewis, or by any person for him, to the said Samuel or to any person for him; he denies that the same was afterwards, at any time during the life-time of said Lewis, seen by or was in possession of, or was read to and in the presence of the said Samuel, or that during the life-time of said Lewis the provisions thereof were considered or discussed by or in the presence of the said Samuel; and denies that the existence or contents of said alleged deed of trust was known to the said Samuel until after the death of the said Lewis; and he says that the said Lewis, immediately after executing and acknowledging the said deed, took possession of the same, and placed it in a box wherein he deposited and kept his private papers, and deposited said box so containing said deed in a closet in his bed-chamber; that said closet was devoted to the exclusive use and exclusively used by the said Lewis at the time of so depositing said deed therein and until the moment of his death as a depositary for his private papers; that the bed occupied by said Lewis at said time until his death was placed
40 against the said closet, thereby preventing all access to said closet or to said papers by any other person than himself; and that said alleged deed of trust remained so deposited in said box in the said closet until after the death of said Lewis; and the examination of the papers and effects of said Lewis after his decease was found by defendant and said Samuel Carusi so deposited in said box.

He further says that the said Samuel Carusi was not present at the execution or acknowledgment of said alleged deed of trust, and had no opportunity to see the same or to become acquainted with the contents thereof before it was so taken possession of and deposited in said closet by the said Lewis.

He further denies that the said alleged deed of trust referred to the will theretofore made, as alleged in said paragraph; denies that said will designated the persons to whom the real estate of said Lewis was directed by said alleged deed of trust to be conveyed upon the death of said Lewis; and denies particularly that the plaintiff and said Genevieve E. Carusi are entitled by said alleged deed of trust and said last will to a conveyance of said real estate upon the terms of said will, or upon any terms.

He further denies that said alleged deed of trust was withheld
41 from record with any reference to the plaintiff and her said sister, or either of them, or with a view to deprive them or either of them of any right acquired under said alleged deed of trust or for any other reasons than because the said paper had not been in any manner delivered to said alleged grantee by said alleged grantor, and therefore was of no legal validity or effect; and he denies that any act was done by said Samuel or by any person in reference to said paper which constituted a suppression of said alleged deed of trust; denies that the same was suppressed with a knowledge on the part of said Samuel that the said paper had any legal validity; denies that said Samuel was

ever advised that under the terms of said alleged deed of trust he, the said Samuel, took limited powers only over the real estate of said Lewis, or was ever advised that said estate belonged by virtue of said alleged deed of trust to the plaintiff and her said sister as the persons designated in said last will.

Fifth. He admits the allegations contained in paragraph five of the bill.

42 Sixth. He denies that said Lewis was at the time of executing the absolute deed mentioned in paragraph five incapable of understanding the purport thereof, or of executing the same in a proper manner, by reason of the condition of his mind, either on account of illness or any other cause; denies that said Lewis did in fact execute or acknowledge the same without understanding the purport thereof; denies that said Lewis was procured by said Samuel, or by said Samuel or other persons aiding him, to execute or acknowledge or deliver said last-mentioned deed owing to a belief fostered by him or them, or by any person in the mind of said Lewis, that said deed would more effectually carry out the disposition of his real estate theretofore made by him through said last will and said alleged deed of trust, or through either; denies that said absolute deed was in fact executed or acknowledged or delivered by said Lewis with a belief that the same would carry out the said disposition; and denies that said deed was executed or acknowledged or delivered by said Lewis because of any promises made to him before that time by said Samuel, that said Samuel would carry into effect and execute, in any and all events, the trusts alleged to be created by said alleged deed of trust and last

43 will for the benefit of plaintiff and her said sister or sisters; and denies that any such promises were in fact made.

Seventh. He denies that at the time of making said absolute deed to said Samuel the said Lewis had no legal title to the real estate therein described, and had divested himself of such title by said alleged deed of trust; denies that said Lewis was, by reason of illness and great infirmity of mind and body, incapable of making said absolute deed; denies that said Samuel had already been created trustee of said property, either for the purpose of conveying the same to the plaintiff and her said sister or sisters, under said alleged deed of trust and last will, or for any other purpose; denies all fraud as charged in said paragraph, and especially denies that the said Samuel procured said Lewis to make said deed, and denies that the acceptance of the same by the said Samuel, or anything connected with the making or delivering or acceptance thereof, was in fraud of any rights of the plaintiff or her said sister or sisters, or of any person interested or pretending to be interested in said estate; and denies that said ab-

44 solute deed ought to be set aside and declared null and void by reason of fraud.

Eighth. He admits that the said Lewis Carusi died, as alleged in paragraph eight, leaving no other will or paper-writing in the nature of or purporting to be his last will or testament, than the will described in said paragraph, and made an exhibit to the bill; but he denies that the paper last mentioned was left at the death of said Lewis as his last will and testament, and denies that the same designates the beneficiaries of the trusts alleged to be created by said alleged deed of trusts, and if said paper does in fact designate the beneficiaries of said alleged trust, he denies that it desig-

nates the plaintiff and said other nieces of said Lewis Carusi as such beneficiaries.

Ninth. He denies the allegations contained in paragraph nine, touching the suppression of said alleged deed of trust by said Samuel Carusi; denies that the said Samuel, in violation of any trust reposed in him thereby and by said last will, or of any trust or duty, or with a view to de-
45 feat the provisions of said will and said alleged deed of trust, suppressed the said deed during his life-time; denies that the said Samuel did in fact suppress the said deed at all; denies that said Samuel claimed title under said will, but admits that the said Samuel did at all times and until the day of his death, claim an absolute fee-simple title under and by virtue of said absolute deed to all the real estate of said Lewis, and that said Samuel, at all times and until the day of his death, denied that said alleged deed of trust was ever delivered to him or to any person for him, and admits that the said Samuel claimed that the same was void and of no effect, and claimed that no person, save himself, had any right to any portion of the estate of said Lewis, and he denies the said several actings and doings of the said Samuel were in bad faith and in violation of right, equity, and good conscience.

Tenth. He admits that after a caveat had been filed, as alleged by plaintiff, against the probate of said paper, as the last will and testament of said Lewis Carusi, no further action was taken with reference to said will in the orphans' court of the District of Columbia. He denies
46 that proceedings were instituted on the equity side of the supreme court of the District of Columbia, for the purpose of having last will set aside, but admits that such proceedings were instituted by Nathaniel Carusi, a brother of said Lewis, against said Samuel Carusi, for the purpose of having said absolute deed to said Samuel Carusi set aside; that no decree was made in said cause, and that all matters in controversy between the said parties were compromised and settled, and that said Samuel Carusi, in pursuance of said agreement of compromise, undertook to pay to said Nathaniel Carusi certain amounts of money.

Eleventh. He denies that said Samuel took possession of the estate of the said Lewis, during the life-time of the said Lewis, and from that time treated the estate as his own; but he admits that the said Samuel did so take possession after the death of said Lewis, and from that time did treat said estate as his own, and without any reference to the alleged trusts set up in plaintiff's bill or to any rights that might be pretended to belong to the plaintiff, or to other parties than himself, mentioned in said
47 last will; did receive and appropriate the rents, issues, and profits arising from said estate to his own use, and that said Samuel did create an incumbrance thereon, and that said Samuel did in every way treat the said estate as if it were absolutely his own.

Twelfth. He denies that said Lewis Carusi in his last will and testament, coupled with a device of his said real estate a "desire and trust that his said brother Samuel will so use the same as not to diminish it in value beyond the sum necessary for the support and maintenance of him, said Samuel, during his life-time;" but says that the paper alleged to be the last will and testament of said Lewis contained the following words: "I give, devise, and bequeath the same to my brother, Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust however that he will not diminish

the same to a greator extent than may be necessary for his comfortable support and maintenance," and he denies that beyond the amount necessary for the support and maintenance of the said Samuel, the profits of
48 the said estate were to be accumulated for the benefit of the plaintiff and said alleged devisees, under said last will, and in pursuance of the provisions of said alleged deed of trust; denies that said Samuel was, at the time of the death of said Lewis, unfitted, by reason of age or otherwise, to manage and control said estate, denies that the whole management and control of said estate was placed in the hands of this defendant; but says that he, the defendant, and Robertson Howard, the husband of the plaintiff, had formed a copartnership and opened an office, in the city of Baltimore and State of Maryland, for the collection of claims, rents, etc., and the practice of law; and that said firm of Howard and Carusi were employed to collect the rents arising from the estate of the said Samuel Carusi and to pay the taxes on the said estate, and for no other purpose; and were allowed as compensation therefore five per centum on said collections; that in consequence of this defendant residing in the city of Washington, in the District of Columbia, the collection of said rent was made exclusively by him, but that the profits therefrom were enjoyed exclusively by said Howard; that this defendant did from time to time pay the rents to said Samuel, or make payments out of the same as directed by him, the said Samuel. And defendant further says
49 that the said firm acted as collectors for the said Samuel Carusi from September 6th, 1875, to and including October, 1876, when said firm was dissolved; and that this defendant continued to collect the rents of the said Samuel until February 27th, 1877, at which time the said Samuel came to reside in the city of Washington, in the District of Columbia, and took the collection of said rents out of the hands of said defendant, who did not make any further collections for said Samuel until June, 1877, when he was again employed by said Samuel to make collections of said rents. He denies that he never made any account to said Samuel during his life-time of his said collections, and avers that he did make a full and satisfactory account of all collections made for said Samuel, and for which he submits an acquit'ance for all amounts so collected, marked "Exhibit ;" he denies that a large amount, or that any amounts of said rents and profits still remains in his hands unaccounted for; denies that the amount of rents and profits was greater than was necessary for the support and maintenance of the said Samuel, and says that they were insufficient to meet the current expenses of the said Samuel and pay the
50 debt that had accrued upon said estate, prior to the death of said Lewis; denies that the said rents and profits were not expended in and about the maintenance and support of said Samuel; and denies that the same or any part thereof have been retained in the defendant's hands. He further denies that under the provisions of said last and said alleged deed of trust, the said Samuel Carusi was required, immediately upon the death of said Lewis, to convey the entire real estate of said Lewis, or any part thereof, to the plaintiff and her said sister or sisters; and denies that from the time of the death of the said Lewis the said estate is to be regarded as belonging to the said parties.

Thirteenth. He denies that said Samuel Carusi had no other property

except what was conveyed to him by said absolute deed mentioned in paragraph thirteen; but admits the death of said Samuel, and the making and proving of his said last will, and the intent of said will as alleged in said paragraph.

Fourteen. He denies that said Samuel Carusi had no estate in the property formerly belonging to said Lewis, which he could dispose of
51 by his last will as aforesaid, or in any other way, so as to affect the rights set up by plaintiff in behalf of herself and her said sister or sisters, and denies that plaintiff or her said sister or sisters have any rights under said last will of said Lewis, or said alleged deed of trust, and denies that said Samuel was only a trustee to hold said property during the lifetime of said Lewis, and upon trust to convey the same on the death of said Lewis to the plaintiff and her said sister or sisters in the manner set forth in said alleged deed of trust; and he further says that he denies that said defendant Genevieve E. Carusi did, about the first day of October, 1876, or at any other time, cause to be made in writing, or unite with the plaintiff in causing to be made in writing, the proposition to the said Samuel set forth in paragraph fourteen, and says that said proposition was in fact made only by the plaintiff and her husband, the said Robertson Howard, who wrote the said proposition and used the name of Genevieve E. Carusi, without consulting with or being authorized by the defendant Genevieve E. Carusi so to do. And he admits that said Samuel did refuse to pay any attention to the same, or to recognize any legal
52 right of the plaintiff or of said Genevieve to any portion of said real or personal estate.

Fifteenth. He admits the fact of the execution of a lease by said Samuel Carusi to one Walker, as alleged in paragraph fifteen, and the fact of the assent of said Samuel to an assignment thereof to one Rogers, as therein alleged, and says that said lease was put on record by said Rogers. He denies that said acts were done by said Samuel by virtue of or with any reference to or knowledge of any power conferred on him by said alleged deed of trust; and he says that three days before the execution and acknowledgment of the said alleged deed of trust by the said Lewis, the said Lewis had executed and delivered to the said Samuel a power of attorney under seal, whereby the said Lewis authorized and empowered the said Samuel to execute leases of the whole or any part of the real estate of said Lewis; and defendant says that said power of attorney was the only instrument in the possession of or known to the said Samuel at the time of the execution of said lease, whereby any power over the real estate belonging to said Lewis, or as to the leasing thereof, were vested in said Samuel; and he alleges that the said Samuel, being ignorant of the forms of executing
53 said power of attorney, undertook to execute said lease to said Walker in pursuance thereof; and that the manner of executing the same was wholly caused by mistake, and misapprehension of the legal effect of said power of attorney. He denies that said acts were done by said Samuel without any reference to the said Lewis, except that the said Lewis was by reason of such misapprehension and mistake not mentioned in said lease. He denies that since the death of said Lewis, a rent of seven thousand dollars per annum has been received from said real estate, and says that not more than six thousand two hundred and twenty-five dollars was ever received from said estate in any one year since the death of said

Lewis. He denies that no part of the rents and profits so received have been devoted to the benefit of the plaintiff and her said sister; but admits that no part thereof has been so devoted to them as parties interested in the said estate; and he says that a large part of the said rents and profits have, in fact, been devoted to the benefit of plaintiff and her said sister by the said Samuel out of liberality and parental affection, and by way of gratuity. He further says that the plaintiff has personally received
54 upwards of two thousand dollars of said rentals besides, or in excess of her entire maintenance, and the sustenance of her said husband, the said Robertson Howard, since her marriage with said Howard, in June, 1875; and that with the exception of a few months, not exceeding five, the plaintiff and her said husband have been entirely dependent on said Samuel, and have lived in his house in said city of Baltimore. He admits that said Samuel did raise funds by deed of trust upon part of the real estate formerly belonging to the said Lewis Carusi, but denies that it was for the purpose of purchasing said dwelling-house in the said city of Baltimore; and says that said funds were raised for the purpose of keeping the said property from being sold at public auction under a tax lien of nearly four thousand dollars; which said lien had in part accrued before the death of the said Lewis, and he further avers that the said Samuel was forced to accept the sum of six thousand dollars, as the exact amount of said tax lien could not be obtained in a single sum; and that the residue of said funds, being about eighteen hundred dollars, was applied, together with other monies, to the purchase of a dwelling-house as mentioned in paragraph fifteen of the bill. He denies that the
55 property so purchased can be regarded as part of the estate of said Lewis, and as such to be accounted for in the settlement of said estate. He admits the appointment of said Adelaide Sophia Carusi and John McLean Carusi to execute said last will and testament of said Samuel, and that said Adelaide, by reason of the life estate created by said will, has taken possession of the entire estate devised by Samuel, including the estate formerly belonging to said Lewis, but he denies that the said Adelaide or the said John McLean Carusi are incompetent to take charge of and manage such an estate; he denies that the said Adelaide has no business capacity and is unfit for said charge as executrix, and denies that she is charged with any trust, otherwise than as executrix of the will of said Samuel, and denies that plaintiff is without remedy except by the appointment of a receiver, as alleged in paragraph fifteen, and denies that she is entitled to such appointment.

Sixteenth. He denies the allegations of paragraph sixteen, as to the declaration made by said Lewis during his life-time, of his intention to leave his estate to his said nieces; and denies that it was in fact the intention
56 of said Lewis so to leave the same or to make provision at all for events his said several nieces in preference to all persons and to every person who might by reason of affinity have any claim upon said Lewis, and particularly denies such intention of preference as against the said Samuel, and he says that the said Lewis frequently told this defendant that all his estate was to go to his brother Samuel Carusi, and that this defendant was frequently importuned by said Lewis to have some paper drawn up for him to execute that would secure the said Samuel in the peaceful possession of the entire estate of him the said Lewis; and finally

he denies that the actings and doings referred to in said paragraph are contrary to equity and good conscience and tend to any wrong or injury or oppression of the plaintiff.

He further says that he has not possession or control over the said alleged deed of trust, mentioned in the second prayer of the plaintiff's bill.

THORNTON CARUSI.

CITY OF WASHINGTON,
District of Columbia, ss:

I do solemnly swear that I have read the foregoing answer by me
57 subscribed, and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

THORNTON CARUSI.

Sworn and subscribed before me this day of , A. D. 1878.

Thornton Carusi in account with Samuel Carusi.

Amounts of rents collected during the months of Sept., Oct., Nov., and Dec., 1875			$2,433 00
Amount of rents returned to Samuel Carusi during the same period			$2,433 00
Amount of rents collected during the year ending Dec. 31st, 1876			$6,225 00
Amount lost by non-payment of rent			599 00
Total income			$6,824 00
Amount disbursed during the year ending Dec. 31st, 1876:			
January	7th.	Cash to Sam'l Carusi	20 00
	"	" " " "	40 00
	11th.	" " " "	20 00
	20th.	" " " "	20 00
	30th.	" " " "	52 00
Total cash			152 00
58 February	2nd.	Cash to Sam'l Carusi	20 00
	7th.	" " " "	25 00
Total cash			45 00
March	1st.	" " " "	40 00
	3rd.	" " " "	35 00
Total cash			75 00
April	5th.	" " " "	27 00
	12th.	" " " "	10 00
	12th.	" " " "	6 00
	14th.	" " " " (per R. Howard)	10 00
	15th.	" " " "	10 00
	16th.	" " " "	65 00
	16th.	" " " " (R. R.)	2 50
	18th.	" " Genevieve	50 00
	27th.	" " Sam'l Carusi	20 00
	28th.	" " Thornton Carusi	8 00
Total cash			$209 50
May	1st.	Cash to Sam'l Carusi	20 00
	2nd.	" " " "	10 00
	3rd.	" " " "	30 00
	3.	Seven days' summons	2 25

		4.	Cash to Sam'l Carusi	10 00
		8.	" " " "	60 00
		24.	" " " "	20 00
		30.	" " " "	1 00
			Total cash	$153 25
June		6th.	Cash " " "	45 15
		7.	" " R. Howard	5 00
59	June	12.	Cash to Sam'l Carusi	20 00
		19.	" " " "	20 15
		26.	" " Genevieve	20 00
		26.	" " Sam'l Carusi	35 00
				$145 30
July		3d.	" " " " (reg. let'r)	20 10
		"	" " " "	20 00
		14.	" " " "	20 15
		15.	" " R. Howard	4 00
		17.	" " Sam'l Carusi	20 15
		20.	" " " "	30 00
		24.	" " " "	20 00
			Total cash	$134 40
August		1st.	Cash " " "	34 00
		2.	" " " " (servant)	24 15
		4th.	" " " "	5 00
		11th.	" " " "	5 00
		12th.	" " Genevieve	40 00
		15th.	" " Sam'l Carusi	15 00
		19th.	" " " "	20 00
			Total cash	$143 15
September		3d.	Cash " " "	26 00
		11th.	" " " "	34 00
		14th.	" " " "	9 00
		19th.	" " " "	24 00
		19th.	" R. R	2 00
		16th.	Judgment vs. Hany & Plant	4 50
		18th.	Cash to Genevieve	15 00
60	September	25th.	Cash to Sam'l Carusi	32 00
		27th.	" " Z. Jones (rent.)	20 00
		30.	" " Sam'l Carusi	11 25
			Total cash	$177 75
October		3rd.	Cash " " "	55 00
		10th.	" " " "	65 00
		16th.	" " " "	25 00
		16th.	" " " " (sheriff)	15 00
		23d.	" " " "	25 20
		26th.	" " " "	4 75
		28th.	" " " "	7 00
		31st.	" " Genevieve	50 00
				$246 95
November		3d	Cash to Sam'l Carusi (7 days' summons)	2 50
		6th.	" " " "	24 00
		11th.	" " " "	1 00
		17th.	Account of Tho's Dowling	36 00
		20th.	Cash to Sam'l Carusi	55 00
		23d.	" " " "	20 00
		24th.	" " lumber	25 00
		28.	" " Sam'l Carusi	7 00
			Total cash	$170 00

December	1st.	Cash to Sam'l Carusi	20 00
	4th.	" " " "	59 00
	5th.	" nails	2 00
	6th.	" McL. Carusi	2 00
	8th.	" to Sam'l Carusi	45 00
	9th.	" carpenter	20 00
61 December	12th.	Cash to McLean Carusi	20 00
	15th.	" " " "	25 00
	15.	Hinges	1 50
	18th.	McL. Carusi	5 00
	19.	Notary public and nails	4 00
	21.	Cash to Samuel Carusi	25 00
	23.	" " " "	27 00
	23.	" " McL. Carusi	5 00
	25.	" " carpenter	10 00
	28.	" " "	8 00
	29.	" " Sam'l Carusi	20 00
			298 90

Total monthly disbursements:

Specific disbursements for 1876	1,951 70
Howard and Carusi, fees for collecting rents	180 00
Ground rent in Balto	160 00
Interest on mortgage of Theatre Comique	600 00
Cash for painting house in Balt	36 00
Note for No. 6 Waverly Terrace, Balto	1,100 00
Interest on mortgage on Waverly Terrace	330 00
Drawing deeds, recording, *ect.*, for same	52 00
Insurance on Waverly Terrace, Balt	170 00
" " property in Washington, D. C	417 00
Tax on " " Balt	255 00
" " " " Washington, D. C	870 34
Cash to Thomas Dowling, grocer	60 00
Total disbursements for 1876	6,182 04

62 RECAPITULATION.

Total income for the year 1876	$6,824 00
" amount lost by non-payment of rent	599 00
" amount collected "	6,225 00
" disbursements for "	6,182 04
" discrepancy "	42 94

Amount of rents collected from January first, 1877, to February 29th, 1877. $405 00

Amount disbursed as follows:

January	1st.	ground-rent in Balto	$80 00
	4th.	McL. Carusi & cleaning snow	2 25
	8th.	Cash to Sam'l Carusi	20 15
	9th.	" " " " (& check book)	20 50
	10th.	" " " "	22 00
	11th.	" " " "	21 00
	11th.	Railroad & lock	2 85
	11th.	Sundries for shop on C st	1 15
	19th.	Cash to Sam'l Carusi	24 00
	24th.	" " " "	20 00
	29th.	" " " "	22 00
	29th.	Railroad	3 00
		Total cash	$238 90
February	3rd.	Cash to carpenter	5 00
	6th.	" " Sam'l Carusi	20 00
	6th.	" " McL. Carusi	1 00
	8th.	" " " "	1 00
	10th.	" " Burgdorff, (furniture)	10 00
63	February 10th,	cash to Sam'l Carusi	2 00
	13th.	" " " "	17 00

13th. Cl'k of court & marshal's fees	14 50
17th. Cash to Sam'l Carusi	1 00
21st. " " carpenter	7 00
20th. " " Sam'l Carusi	20 00
24th. " " " "	2 00
27th. " " " "	20 50
Total cash	$121 00
Total disbursements	359 90

RECAPITULATION.

Amount collected for Jan'y & Feb'y, 1877	405 00
" disbursed " " " "	359 90
" discrepancy " " " "	45 10
Total unaccounts for from Jan'y 1st, '76, to February 27th, 1877	88 06

Cash and notes returned to Samuel Carusi on settlement:

Cash as per bank a/c to Sam'l Carusi	$186 52
Note of Dr. F. Howard protested, suit brought	100 00
" " H. M. Hurdle "	100 00
" " F. V. Noonan	98 00
" " G. W. Reardon (paid)	50 00
	$534 52

64 The defendant Thornton Carusi began to act as collector for Samuel Carusi on the 6th day of September, 1875, and continued to act in that capacity until the close of February, 1877, during which month Samuel Carusi came to Washington and announced his intention of remaining in said city, and of collecting his rents, and taking the entire management of all of his affairs, and in fact did so; the defendant, however, made occasional collections for him, and turned the amount so collected over to said Samuel on the day of collection, and received receipts for the same, which are herewith submitted. In relation to the amounts collected during the year 1875, the defendant says that Samuel Carusi did not go to Baltimore with his family, but remained in Washington until about the 1st day of November, 1875, received the rents as they were collected, and made disbursements himself; the defendant therefore only kept account of the receipts, nor did he open a regular account with Samuel Carusi until April, 1876. He says that in September, 1875, Samuel Carusi moved his family to Baltimore, which cost upwards of $200.00, paid A. Burgdorff $320.00 for new furniture, examiner J. J. Johnson
65 $140.00, and received two drafts in November from defendant for $145.00.

The defendant says that the relations which existed between himself and his father, Samuel Carusi, were such that no accounts were ever kept between them; that from 1863 to 1872 the defendant averaged in his earnings at least $125.00 per month, and that he gave almost his entire earnings to his father's family up to that time, reserving for himself very little more than would dress him in accordance with his social position; for that reason defendant did not think it necessary to keep accounts between himself and his father, Samuel Carusi. The defendant further says that between September, 1875, and February, 1877, he advanced to Samuel Carusi $263.00, for which he did not take any acknowledgement, and that the whole of said amount has never been returned to him.

THORNTON CARUSI.

CITY OF WASHINGTON,
District of Columbia, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated
66 upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

THORNTON CARUSI.

Sworn and subscribed before me this day of March, A. D. 1878.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

Answer J. McL. Carusi.—Filed Mar. 23, 1878.

In the supreme court of the District of Columbia, the 23rd day of March, 1878. In equity.

ISOLINA E. HOWARD, PLAINTIFF,
against
ADELAIDE SOPHIA CARUSI, JOHN MCLEAN Carusi, Philipa Estelle Caulfield, Samuel Pollundo Carusi, Thornton Carusi, and Genevieve E. Carusi, defendants. } In equity. No. 6075.

Answer of the above-named defendant John McLean Carusi to the bill of complaint of the above-named plaintiff.

In answer to the said bill he says as follows:

First. He admits the allegations contained in paragraph one.
67 Second. He admits the allegations contained in paragraph two.
Third. He admits the allegations contained in paragraph three.
Fourth. He admits the fact that at the time stated in paragraph four, the said Lewis Carusi executed and acknowledged the deed therein described; but denies that he thereby conveyed to said Samuel Carusi all or any part of his real estate; and upon information and belief, he denies that said so-called deed of trust was ever in any way delivered by said Lewis, or by any person for him, to the said Samuel, or to any person for him, or was afterwards, at any time during the life-time of said Lewis, seen by, or was in the possession of, or was read to and in the presence of the said Samuel, or that, during said life-time, the provisions thereof were considered or discussed by or in the presence of said Samuel; and, upon the same information and belief, he denies that the existence or contents of said alleged deed of trust were known to the said Samuel until after the death of said Lewis. He further denies that the said alleged deed of trust referred to the will theretofore made, as alleged in said paragraph;
68 denies that said will designated the persons to whom the real estate of said Lewis was directed by the said alleged deed of trust to be conveyed upon the death of said Lewis; and denies particularly that the plaintiff and said defendant Genevieve are entitled by said alleged deed of trust and said last will to a conveyance of said real estate upon the terms of said last will. He further denies that said alleged deed of trust

was withheld from record with any reference to the plaintiff, and her said sisters, or with a view to deprive them of any right acquired under said alleged deed of trust, or for any other reason than because the said paper writing had not been in any manner delivered by said alleged grantor, and was therefore of no legal effect or validity; and he denies that any act was done by said Samuel, or by any person, which constituted a suppression of said alleged deed of trust; denies that the same was suppressed with a knowledge on the part of said Samuel, or of any person, that said paper writing had any validity; denies that said Samuel was ever advised that, under the terms of said alleged deed of trust, he took limited powers only over the estate of said Lewis, or was ever advised that said estate belonged, by virtue of said alleged deed of trust, to the plaintiff,
69 and her said sister, as the persons designated in said last will.

Fifth. He admits the allegations contained in paragraph five.

Sixth. He denies that said Lewis was, at the time of executing the absolute deed mentioned in paragraphs five and six, incapable of understanding the purport thereof, or of executing or acknowledging the same in a proper manner, by reason of the condition of his mind, either on account of illness or any other cause; denies that said Lewis did, in fact, execute or acknowledge the same without understanding the purport thereof; or was procured by said Samuel, or by said Samuel and other persons aiding him, to execute, or acknowledge, or deliver the same, owing to a belief, fostered by him, or them, or by any person, in the mind of said Lewis that said deed would more effectually carry out the disposition of his real estate theretofore made by him through said last will and said alleged deed of trust, or through either; or did, in fact, execute, or acknowledge, or deliver the same with a belief that it would carry out said disposition, or because of any promises made to him before that time by said Samuel that he, the said Samuel, would in any and all events carry into effect and execute the trusts alleged to be created by said deed of trust and
70 last will for the benefit of the plaintiff and her said sister; and he denies that any such promises were in fact made.

Seventh. He denies that at the time of making said absolute deed to said Samuel the said Lewis had no legal title to the real estate described therein, and had divested himself of such title by said alleged deed of trust, or that said Lewis was by reason of illness and great infirmity of body and mind incapable of making said absolute deed; denies that said Samuel had already been created trustee of said property either for the purpose of conveying the same to the plaintiff and her said sister under said alleged deed of trust and last will, or for any purpose; denies all fraud as charged in said paragraph, and especially denies that said Samuel procured said Lewis to make said deed, and denies that the acceptance thereof by said Samuel or anything connected with the making or delivery or acceptance thereof, was in fraud of any rights of the plaintiff or her said sister or sisters, or of any person interested or purporting to be interested in said estate, and denies that said absolute deed ought to be set aside and declared to be null and void by reason of fraud.

71 Eighth. He admits that said Lewis died, as alleged in paragraph eight, leaving no other will or paper writing in the nature of or purporting to be his last will or testament than the paper described in said paragraph and made an exhibit to the bill; but he denies that said paper

was left at the death of said Lewis as his last will and testament, and denies that the same designates the beneficiaries of the trusts alleged to be created by said deed of trust, and if said paper does in fact designate the beneficiaries of said alleged trust, he denies that it designates the plaintiff and her said sister as such beneficiaries.

Ninth. He denies the allegations contained in paragraph nine touching the suppression of said alleged deed of trust by said Samuel; denies that said Samuel, in violation of any trust reposed in him thereby and by said last will, or of any trust or duty, or with a view to defeat the provisions of said will and said alleged deed of trust, suppressed the said deed during his life-time; denies that the said Samuel did in fact suppress the said deed at all; denies that said Samuel claimed title under said will; but admits that said Samuel did at all times and until the day of his death claim an
72 absolute fee-simple title under and by virtue of said absolute deed to all the real estate of said Lewis, and that said Samuel at all times and until the day of his death denied that said alleged deed of trust was ever delivered to him, or to any person for him, and admits that the said Samuel claimed that the same was void and of no effect, and claimed that no person save himself had any right to any portion of the estate of said Lewis; and he denies that the said several actings and doings of the said Samuel were in bad faith and in violation of right, equity, and good conscience.

Tenth. He admits that after a caveat had been filed as alleged by plaintiff against the probate of said paper as the last will and testament of said Lewis no further action was taken with reference to said will in the orphans' court of the District of Columbia; denies that equity proceedings were instituted on the equity side of the supreme court of the District of Columbia for the purpose of having said last will set aside, but admits that such proceedings were instituted by Nathaniel Carusi, a brother of said Lewis, against said Samuel Carusi for the purpose of having said absolute deed to said Samuel set aside; that no decree was made in said cause, and
73 that all matters in controversy between the said parties were compromised and settled, and that said Samuel, in pursuance of said agreement of compromise, undertook to pay to said Nathaniel certain amounts of money.

Eleventh. He denies that said Samuel took possession of the estate of the said Lewis during the life-time of said Lewis, and from that time treated said estate as his own; but he admits that said Samuel did so take possession after the death of said Lewis, and did from that time treat said estate as his own, and did, without any reference to the alleged trusts set up in plaintiff's bill, or to any rights that might be pretended to belong to the plaintiff, or to any other parties than himself mentioned in said last will, receive and appropriate to his own use the rents, issues, and profits arising from said estate, and did create an encumbrance thereon, and did in every way treat the said estate as if it were absolutely his own.

Twelfth. He denies that said Lewis in his said last will coupled with the devise of his said real estate a desire and trust that his said brother Samuel Carusi will so use the same as not to diminish it in
74 *in* value beyond the *same* necessary for the support and maintenance of him, the said Samuel, during his life-time; but admits that the paper alleged to be the last will and testament of said Lewis contained

the following words: "I give, devise, and bequeath the same to my brother Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance;" denies that beyond the amount necessary for such support and maintenance the profits of said estate were to be accumulated for the benefit of the plaintiff and said alleged devisees under said last will and in pursuance of the provisions of said alleged deed of trust; denies that said Samuel was at the time of the death of said Lewis unfitted, by reason of age or otherwise, to manage and control said estate; denies that the whole management and control thereof were placed in the hands of said defendant Thornton Carusi, but says that said Thornton Carusi was employed by said
75 Samuel only to collect the rents and profits of said estate and to attend to the payment of taxes thereon, and that said Thornton did in that capacity collect said rents and profits and pay said taxes for said Samuel, and from time to time made payments and remittances to said Samuel; and he says that said Thornton rendered to said Samuel an account of said collections and disbursements and received from said Samuel an acquittance for the same, and he denies that large amounts or that any amount of said rents and profits are still remaining in the hands of said Thornton unaccounted for; he denies that said rents and profits were greater than was necessary for the support of said Samuel, and denies that the same were not expended in and about the support and maintenance of said Samuel. He denies that under the provisions of said last will and said alleged deed of trust the said Samuel was required, immediately upon the death of said Lewis, to convey the entire real estate of the said Lewis or any part thereof to the plaintiff and her said sister or sisters; and denies that from the time of the death of the said Lewis the said estate is to be regarded as belonging to plaintiff and her said
76 sister or sisters as devisees under said will and deed.

Thirteenth. He denies that said Samuel Carusi had no other property except what was conveyed to him by the absolute deed described in paragraph thirteen; but he admits the death of said Samuel, the making and proving of his said last will and the intent thereof as alleged in said paragraph.

Fourteenth. He denies that the said Samuel Carusi had no estate in the property formerly belonging to said Lewis, which he could dispose of by his last will as aforesaid, or in any other way, so as to affect the rights pretended and set up by the plaintiff in behalf of herself and her said sisters, and denies that the plaintiff or her said sisters have any rights under said last will of Lewis of said alleged deed of trust, and denies that said Samuel was only a trustee to hold said property during the life-time of said Lewis, and upon trust to convey the same upon the death of said Lewis to the plaintiff and her said sister or sisters in the manner set forth in said alleged deed of trust and last will, and as to all the other matters set forth in paragraph fourteen he says he has no information, and therefore neither admits nor denies the same.

77 Fifteen. He admits the fact of the execution of a lease by said Samuel to one Walker, and the fact of said Samuel's assent to an assignment thereof to one Rogers, as alleged in paragraph fifteen; but de-

nies that said acts were done by said Samuel by virtue of or with any reference to or knowledge of any power conferred on him by said alleged deed of trust, and denies that said acts were done without any reference to said Lewis, except that said lease failed to mention the name of said Lewis. And he says that the said Samuel held a power of attorney from said Lewis at the time of executing said lease, authorizing him to make leases of the property of said Lewis, and that said lease was procured to be drawn up by said Walker, and was signed by Samuel Carusi in his own name, under a mistake and misapprehension as to the proper manner of executing the power given by said power of attorney, and with the intention to execute the same. He denies that the rents of said real estate amounted to so much as seven thousand dollars in any one year, and says that they did not at any time amount to more than six thousand
78 eight hundred and twenty-four dollars per annum. He admits that no part of the rents and profits received from said real estate has been devoted to the plaintiff or her said sister as the parties interested in said estate, but says that a large part of said rents and profits was devoted by said Samuel to the benefit of said parties out of liberality and parental affection. He admits that said Samuel, in part payment for said dwelling-house in the city of Baltimore, paid money raised by a deed of trust upon the real estate formerly belonging to said Lewis; but he says that the loan obtained on said deed of trust, amounting to six thousand dollars, was procured chiefly for the purpose of paying taxes on said real estate which were in arrears during the life-time of said Lewis. He denies that the property so purchased in Baltimore is to be regarded as part of the estate of said Lewis, and as such to be accounted for in the settlement of said estate. He admits the appointment of Adelaide Sophia Carusi and of the defendant to execute the said last will and testament of said Samuel, and that the said Adelaide, by reason of the life estate created by said will, has taken possession of the entire estate devised by said Samuel,
79 including the estate formerly belonging to said Lewis; but he denies that said Adelaide or said John are incompetent to take charge of and manage such an estate. He denies that said Adelaide has no business capacity and is unfit for said trust as executrix, and denies that she is charged with any trust otherwise than as executrix of the will of the said Samuel, and denies that plaintiff is without remedy, without appointment of a receiver as alleged in paragraph fifteen, and denies that she is entitled to such appointment.

Sixteenth. He denies the allegations of paragraph sixteen, as to declarations made by said Lewis Carusi during his life-time of his intention to leave his estate to his said nieces, and denies that such was the intention in fact of said Lewis; and, finally, he denies that the actings and doings referred to in said paragraph are contrary to equity and good conscience, and tend to any wrong or injury or oppression of the plaintiff.

And he further says, in answer to said paragraph, that he is ready and willing to produce in this court the said alleged deed of trust whenever he shall be by order of the court directed so to do.

JOHN McL. CARUSI.

L. G. HINE,
JAMES & SAVILLE,
For Defendant.

80 CITY OF WASHINGTON,
District of Columbia, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

JOHN McL. CARUSI.

Sworn and subscribed before me this 23d day of March, A. D. 1878.
R. J. MEIGS, *Clerk.*

CITY OF WASHINGTON,
District of Columbia:

Answer of Genevieve E. Carusi.—Filed Mar. 27, 1878.

Supreme court of the District of Columbia, the day of , 1878.
In equity.

ISOLINE E. HOWARD, PLAINTIFF,
against
ADELAIDE SOPHIA CARUSI, JOHN McLEAN CARUSI, Philipa Estelle Caulfield, Samuel P. Carusi, Thornton Carusi, and Genevieve E. Carusi, defendants.

81 Answer of the above-named defendant Genevieve E. Carusi to the bill of complaint of the above-named plaintiff.

In answer to the said bill of complaint the said defendant Genevieve E. Carusi says that she neither admits nor denies any of the allegations contained therein; that she does not abandon or forego any rights which she may have in the matters to be determined in this cause, but submits herself wholly to the protection and consideration of the court, to abide what may be found on the final decree in this cause to be equitable and right.

GENEVIEVE E. CARUSI.

B. G. LOVEJOY,
Attorney for Defendant Genevieve E. Carusi.

82 *Answer of A. S. Carusi.—Filed April 4th,* 1878.

In the supreme court of the District of Columbia, the day of , 1878. In equity.

ISOLINA E. HOWARD, PLAINTIFF,
vs.
ADELAIDE SOPHIA CARUSI, JOHN McLEAN Carusi, Philipa Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi, defendants. No. 6078.

Answer of the above-named defendant Adelaide Sophia Carusi to the above bill of complaint.

In answer thereto she says as follows:
First. She admits the allegations of paragraph one.

Second. She admits the allegations of paragraph two.

Third. She admits the allegations of paragraph three.

Fourth. She admits that at the time stated in paragraph four the said Lewis Carusi executed and acknowledged the deed therein described, but denies that he thereby conveyed to the said Samuel Carusi any part or all of his real estate; denies that said alleged deed of trust was
83 ever in any way delivered by said Lewis, or by any person for him, to said Samuel, or to any person for him; or was afterwards, at any time during the life-time of said Lewis, seen by, or was in possession of, or was read to or in the presence of the said Samuel; or that during said life-time the provisions thereof were considered or discussed by or in his presence, or that the existence or contents thereof were known to him, the said Samuel, until after the death of said Lewis. She denies that said alleged deed of trust referred to the will theretofore made, or designated the persons to whom the real estate of said Lewis was directed by said alleged deed of trust to be conveyed upon the death of said Lewis, and particularly denies that plaintiff and said defendant Genevieve are entitled by said alleged deed of trust and said last will to a conveyance of said real estate upon the terms of said last will. She denies that said alleged deed of trust was withheld from record with any reference to plaintiff and her said sisters, or with a view to deprive them of any right acquired under the same, or for any other reason than
84 because said paper had not been delivered by said alleged grantor, and was therefore of no validity; and she denies that any act done in the premises by said Samuel, or by any person, constituted a suppression of said alleged deed of trust; denies that the same was suppressed with a knowledge on the part of said Samuel, or of any person, that said paper writing had any validity; or that said Samuel was ever advised that under the terms thereof he took limited powers only over the estate of said Lewis, or was ever advised that said estate belonged by virtue thereof, to the plaintiff and her said sisters as the persons designated in said last will.

Fifth. She admits the allegations of paragraph five.

Sixth. She denies that said Lewis was at the time of executing the absolute deed mentioned in paragraphs five and six incapable of understanding the purport thereof, or of executing or acknowledging the same in a proper manner by reason of the condition of his mind, either on account of illness or any other cause; or did in fact execute or acknowledge
85 the same without understanding the purport thereof. And she says that the capacity of said Lewis to understand the purport of said deed or of any deed of conveyance, and to understand and conduct any business transaction, or to make conveyances or dispositions of his property, was the same and in the same condition when he executed and delivered the said absolute deed, as when he executed and acknowledged the said alleged deed of trust. She denies that the said Lewis was procured by said Samuel, or by said Samuel and other persons aiding him, to execute or acknowledge or deliver said absolute deed owing to a belief, fostered by him or them or by any person in the mind of said Lewis, that the said deed would more effectually carry out the disposition of his real estate theretofore made by him through said last will and alleged deed of trust, or through either, or did in fact execute or acknowledge or deliver the same

with a belief that it would carry out said disposition, or because of any promises made to him before that time by said Samuel that said Samuel would, in any and all events, carry into effect and execute the trusts
86 alleged to be created for the benefit of plaintiff and her said sister by said deed of trust and last will, and denies that any such promises were in fact made.

Seventh. She denies that at the time of making said absolute deed to said Samuel the said Lewis had no legal title to the real estate therein described, and had divested himself of such title by said alleged deed of trust, or was by reason of illness and great infirmity of body and mind incapable of making said absolute deed, and denies that said Samuel had already been created trustee of said property for the purpose of con-
87 veying the same to plaintiff and her said sister, under said alleged deed of trust and last will, or for any purpose; denies all fraud as charged in said paragraph, and especially denies that said Samuel procured said Lewis to make said deed, and denies that the acceptance thereof by said Samuel or anything connected with the making or delivery or acceptance thereof was in fraud of any rights of plaintiff or her said sisters, or of any person interested or pretending to be interested in said estate; and denies that said deed ought to be set aside and declared null and void by reason of fraud.

Eighth. She admits that said Lewis died, as alleged in paragraph eight, leaving no other will or paper-writing in the nature of or purporting to be his last will and testament than the paper described in said paragraph and made an exhibit to the will; but she denies that said paper was left, at the death of said Lewis, as his last will and testament, or that the same designates the beneficiaries of the trusts alleged to be created by said deed of trust; and, in case said paper does in fact designate such benefi-
88 ciary, she denies that plaintiff and her said sister or sisters are the persons so designated.

Ninth. She denies the allegations contained in paragraph nine touching the suppression of said alleged deed of trust by said Samuel; denies that said Samuel, in violation of any trust reposed in him thereby and by said last will, or with a view to defeat the provisions of said deed or will, suppressed said deed during his life-time, or that he did in fact suppress said deed at all; denies that said Samuel claimed title under said will; but admits that he did at all times, and until the day of his death, claim an absolute fee-simple title under and by virtue of said absolute deed to all the real estate of said Lewis, and that said Samuel, at all times and until the day of his death, denied that said alleged deed of trust was ever delivered to him or to any person for him, and admits that said Samuel claimed that the same was void and of no effect, and claimed that no person save himself had any right to any portion of the estate of said Lewis; and she denies that the said several actings and doings of the said Samuel were in bad faith and in violation of right, equity, and good conscience.

89 Tenth. She admits that after a caveat had been filed, as alleged by plaintiff, against the probate of said paper as the last will and testament of said Lewis, no further action was taken with reference to said will in the orphans' court of the District of Columbia, but denies that the proceedings instituted on the equity side of the supreme court of said district were instituted for the purpose of setting aside said last will; and

admits and says that they were instituted by Nathaniel Carusi, a brother of said Lewis and said Samuel, against said Samuel, in order to have said absolute deed to said Samuel set aside and declared void; that no decree was made in said cause, and that all matters in controversy between said parties were compromised and settled, and that said Samuel in pursuance of the agreement of compromise, undertook to pay said Nathaniel certain amounts of money, securing the payment thereof by a deed of trust upon the said real estate formerly belonged to said Lewis, and conveyed by him to said Samuel.

Eleventh. She denies that said Samuel took possession of the
90 estate of said Lewis during the life-time of the latter, and from that time treated the same as his own; but admits that said Samuel did so take possession after the death of said Lewis, and did from that time treat the same as his own, and did, without reference to the alleged trusts set up by plaintiff, or to any rights that might be pretended to belong to plaintiff or to any other persons than himself mentioned in said last will, receive and appropriate to his own use the rents, issues, and profits of said estate, and did create an incumbrance thereon, and did in every way treat said estate as absolutely his own.

Twelfth. She denies that said Lewis, in his said last will, coupled with the devise of his real estate a "devise and trust that his said brother, Samuel Carusi, will so use the same as not to diminish it in value beyond the sum necessary for the support and maintenance of him, the said Samuel, during his life-time;" but admits that the paper alleged to be the last will of said Lewis did contain the following words: "I give, devise, and bequeath the same to my brother, Samuel Carusi, to be held, used,
91 and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance;" and she denies that the profits of said estate, beyond the amount necessary for such maintenance, were to be accumulated for the benefit of plaintiff and said alleged devisees under said last will and in pursuance of said alleged deed of trust. She denies that said Samuel was, at the time of the death of said Lewis, unfitted by any reason to manage and control said estate, and denies that the whole management and control thereof were placed in the hands of the defendant, Thornton Carusi; but says that said Thornton was employed by said Samuel only to collect the rents and profits of said estate, and to attend to the collection of taxes thereon; and that said Thornton did, in that capacity, collect such rents and profits and pay such taxes, and, as she is informed and believes, did, from time to time, make payments of said rents and profits to said Samuel, and render an account of said collections and disbursements;
92 and, on the same information and belief, she denies that any amount of said rents and profits remain in the hands of said Thornton unaccounted for. She denies that said rents and profits were greater than was necessary for the support of said Samuel, and denies that the same were not expended in and about his support and maintenance, except so far as the same were expended in and about the support and maintenance of the plaintiff and her husband. She denies that, under the provisions of said last will and alleged deed of trust, the said Samuel was required, immediately upon the death of said Lewis, to convey the entire real estate

of the latter, or any part thereof, to plaintiff and her said sister; and that, from the time of said death, the said estate is to be regarded as belonging to said parties as devisees under said will and deed.

Thirteenth. She denies that said Samuel had no other property except what was conveyed to him by the absolute deed described in paragraph thirteen; but admits the death of said Samuel, the making and proving of his last will, and the intent thereof, as alleged in paragraph thirteen.

93 Fourteenth. She denies that said Samuel had no estate in the property formerly belonging to said Lewis, which he could dispose of by his last will as aforesaid, or in any other way, so as to affect the rights pretended by plaintiff in behalf of herself and her said sisters, and denies that plaintiff or her said sisters have any rights under the said will of said Lewis and said alleged deed of trust; or that said Samuel was only a trustee to hold said property during the life-time of said Lewis, and upon trust to convey the same on his death to said plaintiff and her said sister, in the manner set forth in said will and alleged deed of trust; and, upon information and belief, she denies that said defendant Genevieve caused the proposition described in paragraph fourteen to be made to said Samuel, and says that said Genevieve has declined at all times to take any part in the proceedings set for' in the bill; but she admits that said Samuel refused to pay any attention to the proposition made by plaintiff and her husband, or to recognize any rights of plaintiff, or any parties mentioned in said paragraph, to the real or personal estate

94 described in said alleged last will of said Lewis.

Fifteenth. She admits the execution of a lease by said Samuel to one Walker, and the assent of said Samuel to an assignment thereof to one Rogers, as alleged in paragraph fifteen; but denies that said acts were done by said Samuel by virtue of, or with any reference to or knowledge of, any power conferred on him by said alleged deed of trust; and denies that said acts were done without any reference to said Lewis, except that said lease did not mention the said Lewis as lessor therein. And she says that said Samuel, as she is informed and believes, held from said Lewis, at the time of executing said lease, a power of attorney authorizing him to make leases of the property of said Lewis; and that said lease was signed by said Samuel under a misapprehension as to the proper manner of executing the power given to him by said power of attorney, and with the intention to execute the same. She denies that the rents of said real estate amounted to so much as seven thousand dollars a year; but admits that no part thereof has been devoted to plaintiff or her said sister as the

95 parties interested in said estate; but she says that, out of liberality and parental affection, and by way of gratuity, the said Samuel did devote a large part thereof to the said parties and especially to the benfit of the plaintiff and her said husband. She admits that, in part payment for said dwelling-house in the city of Baltimore, the said Samuel applied moneys raised by a deed of trust upon the said real estate formerly belonging to said Lewis; but she denies that the said property purchased in Baltimore is to be regarded and accounted for as part of the real estate of said Lewis. She admits the appointment of herself and said defendant, John McLean Carusi, to execute said last will of said Samuel, and that she has, by reason of the life estate devised to her by said will, taken possession of the entire real estate formerly belonging to said Lewis and

of said house in Baltimore. She denies that she and the said John McLean are incompetent to take charge of and manage said estate; denies that she has not business capacity for said trust, and denies that plaintiff is without remedy except by the appointment of a receiver, as al-
96 leged in paragraph fifteen, or that he is entitled to such appointment.

Sixteenth. She denies the allegations of paragraph sixteen as to declarations made by said Lewis during his life-time of his intention to leave his estate to his said nieces; denies that such was in fact his intention, and finally denies that the actings and doings referred to in said paragraph are contrary to equity and good conscience, and tend to any wrong or injury or oppression of the plaintiff.

And she further says that she has not had, and has not now, the possession or control of the said alleged deed of trust, and cannot produce the same in court.

ADELAIDE SOPHIA CARUSI.

L. G. HINES,
JAMES & SAVILLE,
For Defendants.

97 STATE OF MARYLAND,
Baltimore City, set:

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ADELAIDE S. CARUSI.

Sworn and subscribed before me this 27th day of March, A. D. 1878.
JOHN F. MEETER, *J. P.*

STATE OF MARYLAND,
Baltimore City, set:

I hereby certify that John F. Meeter, esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore City this 27th day of March, A. D. 1878.

FRANCIS A. PREVOST,
Clerk of the Superior Court of Baltimore City.

98 *Answer of S. P. Carusi.—Filed April 4th, 1878.*

In supreme court of the District of Columbia. The day of , 1878. In equity.

ISOLINA E. HOWARD, PLAINTIFF,
against
ADELAIDE SOPHIA CARUSI, JOHN MCLEAN CARUSI, PHILLIPPA ESTELLE CAULFIELD, SAMUEL POLLANDO CARUSI, THORNTON CARUSI, AND GENEVIEVE E. CARUSI. } No. 6078.

Separate answer to the above-named defendant, Samuel Pollando Carusi, to the bill of complaint of the above-named plaintiff.

In answer to said bill he says as follows:

First. He admits the allegations contained in paragraph one.

Second. He admits the allegations contained in paragraph two.

Third. He admits the allegations contained in paragraph three.

Fourth. He admits the fact that, at the time stated in paragraph four, the said Lewis executed and acknowledged the deed therein described; but denies that said Lewis thereby conveyed to the said Samuel Carusi all or any part of his real estate; he denies that the so-called deed of trust was ever in any way delivered by said Lewis, or by any person for him,
99 to the said Samuel, or to any person for him; denies upon information and belief that the same was afterwards, during the life-time of said Lewis, seen by or was in the possession of, or was read to and in the presence of the said Samuel, or that, during the said life-time, the provisions thereof were considered or discussed by or in the presence of the said Samuel; and also upon information and belief he denies that the existence or contents of said alleged deed of trust were known to the said Samuel until after the death of the said Lewis. He further denies that said alleged deed of trust referred to or intended to refer to the will theretofore made, as alleged in said paragraph; denies that said will designated the persons to whom the real estate of the said Lewis was directed by said alleged deed of trust to be conveyed upon the death of said Lewis; and denies particularly that the plaintiff and said Genevieve E. Carusi are entitled by said alleged deed and will to a conveyance of said real estate, upon the terms of said will, or upon any terms. He further denies that said alleged deed of trust was withheld from record with a view to
100 deprive the plaintiff and her said sisters or either of them of any right acquired under said alleged deed of trust, or with any reference to plaintiff or her said sisters, or either of them, or for any other reason than because the said paper had not been in any manner delivered by said alleged grantor, and was therefore of no legal effect or validity; and denies that any act done in the premises by the said Samuel, or by any person, constituted a suppression of said deed of trust; denies that the same was suppressed with a knowledge on the part of said Samuel that said paper had any validity; says that he is informed and believes that said Samuel never was advised, and therefore, upon such information and belief, denies that said Samuel ever was advised, that, under the terms of said alleged deed of trust, he, the said Samuel, took limited powers only over the estate of the said Lewis, or was ever advised that said estate belonged, by virtue of said alleged deed of trust, to the plaintiff and her sisters, or either of them, as the person designated in said last will.

Fifth. He admits the allegations contained in paragraph five of the bill.

Sixth. He denies that the said Lewis was, at the time of executing
100½ the absolute deed mentioned in paragraph five, incapable of understanding the purport thereof or of executing or acknowledging the same in a proper manner by reason of the condition of his mind, either on account of illness or any other cause; denies that said Lewis did in fact execute or acknowledge the same without understanding the purport thereof; denies that said Lewis was procured by said Samuel, or by said Samuel and other persons aiding him, to execute or acknowledge or deliver said last mentioned deed owing to a belief, fostered by him or them or by any person in the mind of said Lewis, that said deed would more effect-

ually carry out the disposition of his real estate theretofore made by him through his said last will and said alleged deed of trust; denies that said deed was in fact executed or acknowledged or delivered by said Lewis with a belief that the same would carry out the said disposition; and upon information and belief he denies that said deed was executed, acknowledged, or delivered by said Lewis because of any promises made to him before that time by said Samuel that said Samuel would carry into
101 effect and execute in any and all events the trusts alleged to be created by said alleged deed of trust and last will for the benefit of plaintiff and her said sisters, or either of them; and denies that any such promises were in fact made.

Seventh. He denies that at the time of making said absolute deed to said Samuel the said Lewis had no legal title to the real estate therein described, and had divested himself of such title by said alleged deed of trust; denies that said Lewis was, by reason of illness and great infirmity of mind and body, incapable of making said deed; denies that said Samuel had already been created trustee of said property either for the purpose of conveying the same to plaintiff and her said sister or sisters, under said alleged deed of trust and last will, or for any other purpose; denies all fraud as charged in said paragraph, and especially denies that said Samuel procured said Lewis to make said deed; and denies that anything connected with the making or delivery or acceptance thereof was in fraud of any rights of the plaintiff or of her said sisters, or of any person
102 interested, or pretending to be interested, in the said estate; and denies that said deed ought to be set aside and declared null and void by reason of fraud.

Eighth. He admits that the said Lewis died, as alleged in paragraph eight, leaving no other will or paper-writing in the nature of or purporting to be his last will, than the will described in said paragraph; but he denies that the paper last mentioned was left at the death of said Lewis as his last will and testament; and denies that the same designates the beneficiary of the trusts alleged to be created by said alleged deed of trust; and if said paper does in fact designate such beneficiaries, he denies that it designates the plaintiff and her said sisters as such beneficiaries.

Ninth. He denies the allegations of paragraph nine touching the suppression of said alleged deed of trust by said Samuel; denies that said Samuel, in violation of any trust reposed in him thereby, and by said last will, or with a view to defeat the provisions of said will and alleged deed, suppressed the said deed during his life-time; denies that said Sam-
103 uel did in fact suppress the said deed at all; denies that said Samuel claimed title under said will; but admits that he did at all times, and until the day of his death, claim an absolute fee-simple title, under and by virtue of said absolute deed, to all the real estate of said Lewis; and that said Samuel did at all times, and until the day of his death, deny that said alleged deed of trust was ever delivered to him, or to any person for him; and admits that the said Samuel claimed that the same was void and of no effect, and claimed that no person save himself had any right to any portion of said estate of said Lewis; but he denies that the said several actings and doings of the said Samuel were in bad faith and in violation of right, equity, and good conscience.

Tenth. He admits that, after a caveat had been filed, as alleged by

plaintiff, against the probate of said paper purporting to be the last will of said Lewis, no further action was taken with reference to said will in the orphans' court of the District of Columbia; denies that proceedings were instituted on the equity side of the supreme court of the said
104 district, for the purpose of having said last will set aside; but admits that such proceedings were instituted by Nathaniel Carusi, a brother of said Lewis, against said Samuel, for the purpose of having said absolute deed to said Samuel set aside; that no decree was made in said cause, and that all matters in controversy between said parties were compromised and settled, and that said Samuel, in pursuance of said agreement of compromise, undertook to pay said Nathaniel certain amounts of money.

Eleventh. He denies that said Samuel took possession of the estate of said Lewis during the life-time of said Lewis, and from that time treated the estate as his own; but he admits that said Samuel did so take possession after the death of said Lewis, and did from that time treat said estate as his own; and did without any reference to the alleged trusts set up in plaintiff's bill, or to any rights that might be pretended to belong to plaintiff or to the other parties named in said last will, receive and appropriate the rents, issues, and profits arising from said estate, to his own use,
105 and that said Samuel did create an incumbrance thereon, and did in every way treat the said estate as if it were absolutely his own.

Twelfth. He denies that the said Lewis in his said last will coupled with the devise of his real estate a "desire and trust that his said brother, Samuel Carusi, will so use the same as not to diminish it in value beyond the sum necessary for the support and maintenance of him, the said Samuel, during his life-time," but admits that the paper referred to did contain the following words: "I give, devise, and bequeath the same to my brother, Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance;" and he denies that beyond the amount necessary for the support and maintenance of the said Samuel, the profits of said estate were to be accumulated for the benefit of the plaintiff and said alleged devisees, under the said last will, and in pursuance of the provisions of said alleged deed of trust.

106 He denies that said Samuel was, at the time of the death of said Lewis, unfitted, by reason of age or otherwise, to manage and control said estate. He says that he has no personal knowledge as to the management and control thereof being placed in the hands of said defendant, Thornton Carusi, but that he is informed and believes that said Thornton was only employed by said Samuel to collect, and that said Thornton did so collect, the rents and profits of said estate, and did from time to time make payments and remittances to said Samuel; that he has no information as to accounts rendered by said Thornton, nor as to any amounts remaining in his hands unaccounted for, nor of the amount of rents and profits arising from said estate, nor whether they were greater than was necessary for the maintenance of said Samuel, nor how they were expended, and therefore neither admits nor denies the allegations of plaintiff concerning said matters.

He denies that under the provisions of said last will and said alleged deed of trust the said Samuel was required, immediately upon the

death of said Lewis, to convey the entire real estate of said Lewis, or any part thereof, to the plaintiff and her said sister; and denies that from the time of the death of the said Lewis the said real estate is to be regarded as belonging to the plaintiff and her said sister as devisees or beneficiaries under said last will and deed.

Thirteenth. He denies that said Samuel had no other property, except what was conveyed to him by the absolute deed described in paragraph thirteen, but he admits the death of said Samuel, the making and proving of his said last will, and the intent thereof, as alleged in said paragraph.

Fourteenth. He denies that the said Samuel had no estate in the property formerly belonging to said Lewis which he could dispose of by his said last will aforesaid, or in any other way, so as to affect the rights pretended and set up by plaintiff in behalf of herself and her said sisters; and denies that plaintiff and her said sisters have any rights under said last will of said Lewis, or said alleged deed of trust; and denies that said Samuel was only a trustee to hold said property during the life-time of said Lewis, and to convey the same upon the death of said Lewis to the plaintiff and her said sister Genevieve in the manner set forth in said alleged deed of trust and last will; and as to all the other matters alleged in paragraph fourteen he says that he has no information, and therefore neither admits nor denies the same.

Fifteenth. He says that upon information and belief he admits the fact of the execution of a lease by said Samuel to one Walker, and the fact of the assent of said Samuel to an assignment thereof to one Rogers, as alleged in paragraph fifteen, but he denies that said acts were done by said Samuel by virtue of, or with any reference to, or knowledge of any power conferred on him by said alleged deed of trust, and denies that said acts were done without any reference to said Lewis, except so far as the said Lewis was not mentioned in the said lease. He further says that he has no personal knowledge of the amount of rent received from said estate since the death of said Lewis, nor of the application thereof, but that he is informed and believes that plaintiff and her said sister Genevieve have received large benefits from the same; and that upon such information and belief he denies that no part of the rents and profits of said estate has been devoted to the benefit of said parties. He admits that Samuel Carusi did, in part with funds raised by a deed of trust upon the real estate formerly belonging to said Lewis, purchased a dwelling house in the city of Baltimore, but he denies that the property so purchased is to be regarded as part of the estate of said Lewis, and as such is to be accounted for in the settlement thereof. He admits the appointment of said Adelaide and John to execute the last will and testament of said Samuel, and that said Adelaide has, by reason of the life estate created by said last will, taken possession of the entire estate devised by said Samuel, including the estate formerly belonging to said Lewis; but he denies that said Adelaide is incompetent to take charge of and manage such an estate. He denies that said Adelaide has no business capacity and is unfit for said trust as executrix, and denies that she is charged with any trust otherwise than as executrix of the last will of said Samuel, and denies that plaintiff is without remedy, except by the appointment of a receiver, as alleged in paragraph fifteen, and denies that she is entitled to such appointment.

Sixteen. Upon information and belief he denies the allegations of paragraph sixteen, as to declarations made by said Lewis during his lifetime of his intention to leave his estate to his said nieces, the plaintiff, and said Genevieve, and denies that such was the intention in fact of said Lewis; and, finally, he denies that the actings and doings referred to in said paragraph were contrary to equity and good conscience, and tend to any wrong or injury or oppression of the plaintiff.

In answer to the second prayer of plaintiff's bill, defendant says that he never had and has not now possession or control of the said alleged deed of trust referred to therein, and cannot produce the same in court.

SAMUEL POLLANDO CARUSI.

STATE OF CALIFORNIA,
City & County of San Francisco:

I do solemnly swear that I have read the foregoing bill, by me subscribed, and know the contents thereof; that the facts therein stated upon information and belief, I believe to be true.

111 SAMUEL POLLANDO CARUSI.

Sworn to and subscribed before me this 25th day of March, A. D. 1878. City and county of San Francisco.

JAMES L. KING,
Notary Public.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Thos. H. Reynolds, county clerk of the city and county of San Francisco, and ex-officio clerk of the county court, probate court, municipal criminal court, and of the third, fourth, twelfth, fifteenth, and nineteenth judicial district courts of the State of California, in and for said city and county (all of which courts are courts of record, having seals), do hereby certify that James L. King, whose name is subscribed to the annexed jurat, was, at the time of signing the same, a notary public in and for said city and county, duly commissioned, sworn, and qualified, and authorized by law to administer oaths, &c., and full faith and credit are due to all his official acts as such.

And I do further certify that I am well acquainted with the
112 handwriting of the said James L. King, and verily believe that the signature to the said annexed jurat is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court of the twelfth judicial district of the State of California, in and for the city and county of San Francisco, at my office in said city and county, this twenty-fifth day of March, A. D. 1878.

THOS. H. REYNOLDS,
County Clerk of the City and County of San Francisco, and ex-officio Clerk of the District Court of the 12th Judicial District of the State of California, in and for the City and County of San Francisco.

113 *Replication.—Filed May 7th, 1878.*

In the supreme court of the District of Columbia, the 7th day of May, 1878.

ISOLINA E. HOWARD
vs.
ADELAIDE SOPHIA CARUSI & OTHERS.

The plaintiff hereby joins issue with the defendants, and will have the cause heard on bill, answer, depositions, and so forth.

W. B. WEBB,
Solicitor for Plaintiff.

114 *The separate answer of Phillippa E. Carusi.—Filed June 25th, 1878.*

In the supreme court of the District of Columbia.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL.

The answer of Phillippa E. Caulfield, one of the above-named defendants, to the bill of complaint of the above-named plaintiff.

In answer to said bill of complaint I say as follows:

1. I admit the facts to be as alleged in the first and second paragraphs of said bill.

2. I have no personal knowledge of the several matters and things alleged in the 3d paragraph of said bill, but on information and belief I admit them to be true.

3. I have no knowledge whatever of the several matters and things alleged in paragraph 4th of said bill, but, if the same be material, require strict proof thereof.

4. I have no personal knowledge of the matters and things alleged in paragraph 5th of said bill, but on information and belief I admit them to be true.

5. I believe it to be true that the deed referred to in the 6th paragraph of said bill was executed by the said Lewis Carusi some seven or
115 eight days before his death, and that at that time he was in a feeble condition of bodily health and incapable by reason thereof, of signing his name. I do not know of my own knowledge what his mental condition was at that particular time. I saw him about two weeks before he died, and at that time his mind, so far as I was able judge was unimpaired, and I aver the fact to be that the said Lewis Carusi was at this time quite as capable of executing a valid deed or contract as he was at any time in the preceding month of July. The last time I saw my uncle, the said Lewis Carusi, in life, was on the evening before he died, when, although unable to speak, he recognized me. And on information and belief I deny that at the time of the execution of said deed, to wit, on the 17th day of October, 1872, he was of unsound mind, incapable of executing a valid deed or contract. And on information and belief I deny that

my said uncle was procured to execute, acknowledge, and deliver said last-mentioned deed by my father and others, fostering in his mind the belief that said deed would more effectually carry out the provisions and dispositions of said will and said pretended deed of trust, or that said deed was *preserved* to be executed by promises made by my father that he
116 would carry into effect and execute in any and all events the alleged trust in said will and said pretended deed of trust, and I require proof thereof.

6. I can make no other answer to the several allegations and assumptions of fact contained in the 7th paragraph of plaintiff's bill than I have already herein made to the preceding paragraphs of said bill, except to reiterate my denial thereof, or so many and such parts thereof as I have not heretofore admitted, qualified, or explained.

7th. I admit that my uncle, the said Lewis Carusi, died on the 25th day of October, 1872, and that he left no other will than the one referred to in paragraph 8th of said bill, but I deny that said will designates the beneficiaries of the trust created in and by the pretended deed of trust of July 18th, 1872.

8. Answering the 9th paragraph of said bill, I deny that my father, the late Samuel Carusi, violated any trusts reposed in him by said last will and testament, and on information and belief I again deny that my uncle, the said Lewis Carusi, ever executed and delivered said pretended deed of trust; that my father ever suppressed said pretended deed of trust, or ever did anything with a view to defeat the provisions of said will. On
117 information and belief I admit that my father did always, from the death of said Lewis Carusi down to the time of his own death, claim said property as absolutely his own by virtue of said deed of the 17th of October, 1872.

9. On information and belief I admit the allegations contained in paragraph 10th of said bill except the allegations that the equity suit therein referred to was instituted to set aside said last will and testament, and that my father compromised said suit by agreeing to bind himself to pay the amount claimed by the claimants in said suit. And on information and belief I aver the facts to be that said bill was filed to set aside and annul said deed of Oct. 17th, 1872, and not said last will and testament, and that said suit was compromised by my father agreeing to pay the sum of $18,000 to the complainant in said cause.

10. On information and belief I admit the allegations in the 11th paragraph of said bill except in so far as the same have heretofore been denied, qualified, or explained.

11. I deny that at the time of my uncle Lewis Carusi's death my father was incapable of managing said estate. On the contrary, I aver the fact to be, on information and belief, that for a long time thereafter he did
118 personally manage and superintend said estate, and continued so to do until he removed to the city of Baltimore in the State of Maryland, where he resided at the time of his death. On his removal from this city, which was in the fall of 1875, the management of said estate was committed by him to his son, the defendant Thornton Carusi, who took charge of the same under the direction and control of my said father. But on information and belief I deny that the said Thornton Carusi failed to account for the rents, issues, and profits of said estate received by him as

agent for his father, but on the contrary I aver the truth to be that he fully accounted for the same, and I deny that the said Thornton Carusi has retained in his hands, or is justly chargeable with, any portion whatever of said rents, issues, and profits. I do not know what the amount of said rents, issues, and profits were, or whether they were greater than were necessary for my father's maintenance and support, nor what was done with them nor how expended. Of my own knowledge I do not know and cannot state whether the matters of law alleged in paragraph 12th of said bill are correctly stated or not, but on information I aver that they are not.

12. I have no personal knowledge of the several matters alleged in paragraph 13th of said bill, but on information and belief I admit
119 them to be true.

13. I have no knowledge whatever of the several matters and things alleged in paragraph 14th of said bill, and therefore can neither admit nor deny the same, but if material, require proof thereof.

14. I admit that my father, the said Samuel Carusi, purchased a house in the city of Baltimore, where he resided at the time of his death, and that by his last will and testament he appointed his wife and his son, John McL. Carusi, executors, &c., but I have no knowledge of the several other matters alleged in the 15th paragraph of said bill, and am therefore unable either to admit or deny the same, but I require proof thereof, if the same be material.

15. I have on several occasions heard my uncle, the said Lewis Carusi, say that he intended to leave his property to his three nieces, the daughters of my father, Samuel Carusi, equally to be divided between them, but I do not know, and therefore cannot state, what he, the said Lewis Carusi, stated at other times to other persons.

E. B. CAULFIELD.

PHILLIPPA E. CAULFIELD.

I do solemnly swear that I have heard read the foregoing answer by me subscribed, and know the contents thereof, and that the facts
120 therein stated upon my own knowledge are true, and those therein stated on information and belief I believe to be true.

PHILLIPPA E. CAULFIELD.

Subscribed and sworn to before me, a justice of the peace, this 25th day of June, A. D. 1878.

S. M. DRAPER, [SEAL.]
Justice of the Peace.

121 *Replication to answer of Phillippa E. Caulfield.—Filed Oct. 22d, 1878.*

In the Supreme court of the District of Columbia.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI AND OTHERS. } In equity. No. 6078.

The plaintiff hereby joins issue with the *plaintiff* Phillippa Estelle Caul-

field, and will have the cause heard on bill, answer, depositions, and so forth.

W. B. WEBB,
Solicitor for Pl'ff.

122 *Order appointing examiner to take testimony of W. G. Flood.—Filed Dec. 6th*, 1878.

In the supreme court of the District of Columbia, the 6th day of December, 1878.

ISOLINA E. HOWARD
vs.
ADELAIDE S., JOHN McL., THORNTON, SAMUEL P., and Genevieve Carusi and Philippa E. Caulfield.
In equity. No. 6078. Doc. 18.

It is this 6th day of December, 1878, on motion of Wm. B. Webb, solicitor for complainant in the above-entitled cause, ordered that Charles J. Scofield, of Carthage, in the State of Illinois, be, and he is hereby, appointed an examiner to take the deposition of William G. Flood, a witness to be produced on the part of the complainant, in response to the interrogations and cross-interrogations filed, to be propounded to said witness, and the clerk is hereby directed to issue a commission to the said examiner under the rule of this court.

By the court:

MAC AUTHUR, *Just.*

I have no objection to above ap't.

L. G. HINE,
Sol'r Def'ts except Caulfield.

123 TESTIMONY BEHALF OF COMPLAINANT.

Deposition of Wm. G. Flood for comp.—Filed Dec. 20, 1878.

In the supreme court of the District of Columbia, the 6th day of December, 1878.

ISOLINA E. HOWARD
v.
ADELAIDE S. CARUSI.
No. 6078. Equity docket 18.

The President of the United States to Charles J. Schofield, Carthage, Ill., greeting:

Know you that in confidence of your prudence and fidelity you have been appointed, and by these presents you are invested with power and authority to examine William G. Flood as a witness for the complainant in the above-entitled cause, upon the interrogatories annexed to this commission; and therefore you are hereby commanded, at a certain day and place, or certain days and places, to be appointed by you, to cause said witness to come before you, and then and there examine him on oath or affirmation upon the said interrogatories, and reduce his testimony into

writing, to be signed by said witness; and, having so done, annex the same to this writ, closed up under your seal, and make return thereof
124 into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By M. R. CLANCY,
Ass't Clerk.

In the supreme court of the District of Columbia, the 15th of November, 1878.

ISOLINA E. HOWARD
v.
ADELAIDE S., JOHN McL., THORNTON, SAMUEL P., and Genevieve E. Carusi, and Phillipa E. Caulfield.

In equity. No. 6078. Doc. 18.

Interrogatories to be propounded to William G. Flood, of Carthage, in the State of Illinois, a witness produced on the part and behalf of the plaintiff in the above-entitled cause.

First interrogatory. Please state your name, age, residence, and where you resided, and how you were employed, in October, 1872.

125 Second interrogatory. Do you know the parties to the suit, or any of them, and which of them?

Third interrogatory. Were you acquainted with Lewis Carusi, late of Washington City, during his life-time?

Fourth interrogatory. Did you know Samuel Carusi, late of Washington City, during his life-time?

Fifth interrogatory. Were you at any time in the year 1872 employed to prepare, or did you in fact prepare, a deed from Lewis Carusi to Samuel Carusi; and, if so, can you state about what time in the year, and at whose *assistance*?

Sixth interrogatory. Did you at any time, and when, have a conversation with Mr. Samuel Carusi about the deed referred to; and, if so, please state as nearly as you can under what circumstances that conversation occurred, and all that passed at the time?

126 Seventh interrogatory. State whether at any time you had a conversation with Mr. Lewis Carusi about the deed in question, under what circumstances, and, as nearly as you can remember, all that occurred.

Eighth interrogatory. Do you remember the nature of the deed in question; that is to say, whether it was an absolute deed or a conveyance in trust?

Ninth interrogatory. Do you know what became of the said deed? If so, please state fully all you know about it.

Tenth interrogatory. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

W. B. WEBB,
Sol'r for Complain't.

127 (The defendants object to the sixth of the foregoing interrogatories because it is indefinite, and because any answer responsive to it must be incompetent and immaterial, and because the plaintiff is a stranger in interest as to the subject-matter of the inquiry.

To the seventh interrogatory the same objection is made as to the sixth.

To the eighth interrogatory the same objection is interposed as to the sixth.)

Cross-interrogatory.

Did the facts about which you have testified come to your knowledge while acting as clerk for L. G. Hine, attorney at law, and during the time and while you were executing his business as counsel for Lewis Carusi, and the course of executing such business.

JAMES & HINE,
Sol'rs for Def'ts.

(Objected to by complainant's counsel, because there is nothing in the case to show that said L. G. Hine was acting or counsel for Lewis Carusi.
W. B. WEBB, *Sol.*)

128 In the supreme court of the District of Columbia, the 15' November, 1878.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } No. 6078. Equity docket 18.

Answers to the foregoing recited interrogatories propounded to William G. Flood in the above cause.

First interrogatory. My name is William G. Flood; my age is seventy-five years; my residence is now in the town of Carthage, Hancock County, in the State of Illinois. In October, 1872, I resided in the city of Washington, in the District of Columbia, and was at that time employed by L. G. Hine, esq., attorney at law, as clerk or assistant in his office.

Second interrogatory. I do not know any of the parties to this suit.

Third interrogatory. I was acquainted with Lewis Carusi.

129 Fourth interrogatory. My acquaintance with Samuel Carusi was very slight.

Fifth interrogatory. In the time I was employed by Mr. Hine, I think in October, 1872, Mr. Hine handed me sundry papers and directed me to prepare a deed from Lewis Carusi to Samuel Carusi for the property as shown by the papers, which I did.

Sixth interrogatory. I had a short conversation with Mr. Samuel Carusi about the deed. When the deed was prepared I carried and delivered it to Mr. Samuel Carusi at his residence on Capitol Hill. Looking at the deed a few moments I observed, "Perhaps you cannot make it out." He answered, "Yes; it was plainly written." He then stated that his brother was very low, and desired to so arrange that his property should go to the benefit of the girls or nieces. I am not certain as to the latter term, but think it was used. I then remarked, "That is not the kind of deed you

want; that it should be a deed in trust for their benefit, and if
130 so desired I would write another in that way." I understood him to answer it was not necessary, as his brother was willing to trust him to do what was right about the disposition of the property in relation to the girls. I also think I understood him to say that he had had the management of the property for some time, or to that effect. This about the substance of what passed in that conversation.

Seventh interrogatory. I never had any conversation with Lewis Carusi about the deed in question.

Eighth interrogatory. The deed was in fee-simple with a clause providing that the deed should not go into effect until from and after the death of Lewis Carusi.

Ninth interrogatory. I do not know what became of the deed. I don't think I ever saw it again. I may, however, have seen it of record; don't remember.

Tenth interrogatory. I think I have stated all that I can remem-
131 ber concerning this matter.

Cross-interrogatory. All the facts stated came to my knowledge while in the employment of Mr. Hine, and while I was executing his business.

WILLIAM G. FLOOD.

Subscribed and sworn to before me this 17th day of December, A. D. 1878.

CHARLES J. SCOFIELD,
Master in Chancery of Hancock County, Illinois, and Commissioner to take the foregoing deposition.

STATE OF ILLINOIS,
County of Hancock, ss:

I, Charles J. Scofield, of Hancock County, Illinois, a commissioner duly appointed to take the deposition of said William G. Flood, the witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of said William G. Flood as a witness in the above-entitled cause, he was duly sworn by me
132 to testify the truth in relation to the matter in controversy between said complainant and defendants as far as he should be interrogated concerning the same; that said deposition was taken in my office, in the town of Carthage, in said county, on December 17th, A. D. 1878; that after said deposition was taken as aforesaid the interrogatories and the answers thereto, as written down, were read over by the said witness, and that thereupon the said deposition was signed and sworn to by said deponent before me, the oath being administered by me at the place and on the day and year last aforesaid.

CHARLES J. SCOFIELD, [SEAL.]
Commissioner appointed as aforesaid to take the foregoing deposition.

133 *Deposition of Thornton Carusi.—Filed Jan'y* 11, 1879.

In the supreme court of the District of Columbia, the day of November, 1878.

ADELAIDE S. CARUSI, JOHN MCLEAN CARUSI, Samuel P. Carusi, Thornton Carusi, Genevieve E. Carusi, and Philipa E. Caulfield, defendants, *ats.* ISOLINA E. HOWARD, PLAINTIFF. | In equity. No. 6078. Doc. 18.

Interrogatories to be propounded to Thornton Carusi, of San Francisco, California, a witness produced on the part and behalf of defendants, Adelaide S. Carusi, John McLean Carusi, Samuel P. Carusi, and Thornton Carusi, in the above-entitled cause.

First interrogatory. Please state your name, age, residence, and where you resided in July, 1872.

Second interrogatory. State your acquaintance with and your relations to the parties in this cause, and with Lewis Carusi, late of Washington, D. C., deceased, also whether you are a party to this suit.

134 Third interrogatory. State whether you were present at the acknowledgment by the said Lewis Carusi of an instrument purporting to be a deed of trust from said Lewis to Samuel Carusi; if so, then state when and where said acknowledgment occurred, what occurred at the taking of said acknowledgment, what was done with or became of said instrument after it was acknowledged, and when and where you next saw the same.

Fourth interrogatory. State whether said Lewis Carusi was married or single; whether he had brothers or sisters, and who they were.

(Objected to as immaterial and irrelevant, and having no relation to the matters in issue in this cause.)

First cross-interrogatory. How long have you resided in the city of San Francisco; and when did you cease to reside in the District of Columbia?

Second cross-interrogatory. In what business were you engaged in 1872, and how have been engaged since?

135 Third cross-interrogatory. Have you seen at any time the depositions or a copy of the depositions of the witnesses who have been examined in this cause on the part of the plaintiff, or have you been informed of the substance of such depositions, or have you seen extracts from them; and, if so, which of them?

The general interrogatory required by rule of court is waived, and it is hereby stipulated and agreed that the foregoing interrogatories and cross-interrogatories may be propounded to the witness, Thornton Carusi, and his answers thereto reduced to writing by L. S. B. Sawyer, clerk of U. S. circuit court, 9th circuit, San Francisco, California, and the may be transmitted by him to the supreme court of the District of Columbia and read in evidence on the trial of the above-entitled cause.

Washington, D. C., Dec. 12th, 1878.

W. B. WEBB,
Solicitor for Compl.
JAMES & HINE,
Sol'rs for D'f'ts.

136 In the supreme court of the District of Columbia.

ADELAID S. CARUSE, JOHN MCLEAN CARUSI, Samuel P. Carusi, Thornton Carusi, Genevieve E. Carusi, and Philipa E. Caulfield, defendants, *ads.* ISOLINA E. HOWARD. | In equity. No. 6078. Doc. 18.

Be it remembered that on this 28th day of December, A. D. 1878, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, L. S. B. Sawyer, clerk and commissioner duly appointed by the circuit court of the United States for the ninth circuit and district of California, Thornton Carusi, a witness on behalf of the defendants in the above-entitled suit, and the said witness, having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

To the first interrogatory he saith: My name is Thornton Ca-
137 rusi; my age is 34 years, and my present place of residence No. 929 Jackson street, San Francisco. In 1872 I lived on the corner of First street east, North H, Washington, D. C.

To the second interrogatory he saith: I am the son of Adelaide Carusi, and a brother to all the other defendants, also to the apparent plaintiff, and a brother-in-law to the real plaintiff, and one of the defendants.

To the third interrogatory he saith: I was present; I think it was on the morning of the 17th of July, 1872, that Mr. Chas. C. Callan came to the house of my father, Samuel Carusi, between the hours of 9 and ten a. m. I admitted him, and conducted him to the rear part. He said he had come for the purpose of having Lewis Carusi execute certain papers, and he produced from his pocket a power of attorney and what seemed to be a deed of trust. I went to Mr. Lewis Carusi's room and advised him of Callan's presence, then went to my own room and got a pen and ink. L. Carusi followed me into the parlor, where we found Callan sitting at a round table in the southwest corner of the room awaiting us; after
138 saying good morning to Lewis, he asked him if he was ready to execute the papers; Lewis replied, yes. Callan then handed him the pen, but Lewis returned it to him, saying, "I am too damned nervous to write this morning, my hand trembles; you sign." Callan wrote Lewis Carusi's name, requesting Lewis to put his hand to the pen, which he did. Lewis then left the room. Callan and myself, after Lewis had gone, signed as witnesses. Callan then gave the papers to me. After opening the front door for Mr. Callan to go out, I walked immediately back to Lewis Carusi's room and gave him the so-called deed of trust and power of attorney, explaining the difference between them as I then understood it. Lewis took the paper purporting to be the deed of trust, and placed it in a large blue box in a closet in his room. The power of attorney he placed in the drawer of a table that was in the center of his room, and then asked me to call Miss Ann Wright, which I did. When I next saw the paper purporting to be the deed of trust it was taken with other papers, title-deeds, etc., from the above-mentioned blue box; this was after Lewis Carusi's

death, and the papers were taken from the box by Samuel Carusi
139 for examination. After calling Miss Wright, I then went down town to Carusi's Hall, which was being fitted up as a theater, to relieve my father, who was supervising the work during my absence.

To the fourth interrogatory he saith: Lewis Carusi was a bachelor and had never been married. He had two brothers, Nathaniel and Samuel; no sisters or parents.

Cross-examination:

To the first cross-interrogatory he saith: I have resided in San Francisco five months and ceased to reside in the District of Columbia five months ago.

To the second cross-interrogatory he saith: At the time in which these transactions occurred I was attending to the business of Lewis Carusi, superintending the alteration of his hall and arranging with the city government for specially finishing the street in the immediate vicinity of said hall. In the latter part of the year I was in a Government office. Since then my employment has been varied.

140 To the third cross-interrogatory he saith: I have not, at any time, seen any of the depositions taken in this cause, nor a copy of said depositions, or any part thereof, nor have I been informed of the substance thereof. I have not seen extracts of any of them. I have been told that Callan perjured himself.

THORNTON CARUSI.

Subscribed and sworn to before me this 28th day of December, A. D. 1878.

UNITED STATES OF AMERICA,
District of California, ss:

I, L. S. B. Sawyer, clerk and commissioner of the U. S. circuit court in and for the district of California, and special commissioner in the cause in the caption to the foregoing deposition named, do hereby certify that the witness, Thornton Carusi, in the said deposition named was by me duly sworn as hereinbefore certified; that said deposition was taken at the time and place in the caption thereto mentioned, and was reduced to
141 writing by H. P. Shedd, my copyist, in my presence, and in the presence of said witness, and in the presence of no other person; and when completed was carefully read to said witness and by him corrected, was by him subscribed in my presence and in the presence of said copyist, and in the presence of no other person.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said U. S. circuit court, district of California, this twenty-eighth day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.]

L. S. B. SAWYER,
Clerk & Com'r U. S. Circuit Court, Dist. Cal.

142 *Testimony of complainant.—Filed April 7, 1879.*

In the supreme court of the District of Columbia.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI AND OTHERS. } Equity doc., No. 6078.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses, begun and held on the 28th day of October, A. D. 1878, and continued from time to time by adjournment until the 17th day of March, A. D. 1879, when the within depositions were taken, there being present at the office of William B. Webb, 416 5th street, northwest, in the city of Washington, in said District, Charles C. Callan, Anna M. C. Wright, Isolina C. Howard, Harriet L. Wright, Reverend Benj. F. Wight, John Voderey, James N. Callan, and Edward Austin, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein Isolina E. Howard is complainant and Adelaide S. Carusi and others are defendants.

143 In the supreme court of the District of Columbia, the 26th of October, 1878.

ISOLINA E. HOWARD
vs.
ADELAIDE SOPHIA CARUSI AND OTHERS. } In equity. No. 6078. Doc. 18.

To Messrs. James & Saville, L. G. Hine, esq., Eugene Carusi, esq., B. G. Lovejoy, esq., solicitors for defendants:

GENTLEMEN: Please to take notice that on Monday, the 28' instant, at 12.30 o'clock in the afternoon, I will proceed to take the depositions of witnesses to be examined on the part and behalf of the plaintiff in the above-entitled cause before John C. Poor, esq., an examiner of the supreme court of the District of Columbia, at his office No. 1 Columbian College Law Buildings, No. 416 Fifth street, at which time and place you are requested to attend and cross-examine such witnesses.

W. B. WEBB,
Solicitor for Complainant.

144 *Deposition of C. C. Callan.*

WASHINGTON, D. C., *October* 28, 1878.

ISOLINA E. HOWARD
vs.
ADELAIDE E. CARUSI ET AL. } Equity. No. 6078.

Met pursuant to notice; present, W. B. Webb, counsel for complainant, and L. G. Hine and C. P. James, esquires, counsel for defendants.

Mr. CHARLES C. CALLAN, a witness for the plaintiff, being called, who being first duly sworn according to law, deposes and says as follows:

1. Question. State your age and place of residence.

Answer. Charles Constance Callan; 36 years of age; and reside in Philadelphia, Pa.

2. Q. Were you ever a resident of the city of Washington; if so, where, and when did you leave?

A. I resided in Washington until March, 1875.

3. Q. Do you know the parties to this suit; if so, which of them?

145 Ans. I know all by sight; I met the plaintiff once; I know John McLean, Thornton, and Samuel Carusi very well.

4. Q. Were you acquainted with Lewis Carusi in his life-time?

Ans. Very well, indeed.

5. Q. Did you know Samuel Carusi in his life-time?

Ans. Very well.

6. Q. What business were you engaged in in the month of July, 1872, and where?

Ans. I was notary public, commissioner, and conveyancer, at 634 Louisiana avenue.

7. Q. Please state whether you were at any time, and when, employed to prepare a deed from Lewis Carusi to Samuel Carusi. And, if so, by whom were you employed?

(Mr. Hine objects to the question as immaterial.)

146 Ans. Some time in July, 1872, I was employed by Mr. Samuel Carusi to draw a deed in trust from Lewis Carusi to him, Samuel.

(Counsel for the complainant here requests the defendants to produce the deed mentioned in the last answer, they having, in the answer of one of the defendants, John McLean Carusi, offered to produce the said deed.

Counsel for defendants Adelaide Sophia Carusi, John McLean Carusi, Samuel Philando Carusi, and Thornton Carusi here produce a paper left with them by defendant Thornton Carusi, as a paper found after the death of Lewis Carusi in a box containing his papers.)

8. Q. Please look at the paper now shown you, and marked "No. 1," and state if you ever saw it before, and generally all you know about it.

Ans. This is the deed of trust to which I referred as having been drawn by me at the request of Mr. Samuel Carusi; it is also signed by Lewis Carusi in my presence, and duly acknowledged by him.

9. Q. What became of the deed after its acknowledgement by Lewis Carusi, and who was present at the time?

147 Ans. There were present in the room at the execution of the deed Mr. Lewis Carusi, Mr. Samuel Carusi, Thornton Carusi, and myself. Mr. Thornton Carusi witnesseth the deed, as I also did. After its execution, Mr. Samuel Carusi gathered up the deed, with some other papers, and carried the bundle out of the room. What became of it afterwards I do not know.

10. Q. From whom did Samuel Carusi receive the deed, or by whose consent?

(Mr. Hine objects to the last clause of the question as asking for a conclusion, and not a statement of facts.)

Ans. He simply took it up off of the table after it was completed and bundled it up with other papers, of which, I suppose, he was custodian, as he had charge of all of Mr. Lewis Carusi's business. I don't know anything about the consent. No objection was raised in my hearing.

11. Q. Was the deed read to Lewis Carusi at the time of its execution?

148 Ans. It was.

12. Q. The deed provides that the property is to be held in trust by Samuel Carusi, among other trusts, "to convey to such person or persons as the said party of the first part may, by his last will and testament or other paper writing under his hand and seal by two persons witnessed, designate and direct." Was anything said to you either before or after the preparation of this deed as to what persons were intended by this clause in the deed, and, if so, by whom? And state generally all that was said and done with respect to that matter.

(Question objected to because incompetent and immaterial, and specifically because it appears to be an effort create a trust by oral testimony, and to enlarge, explain, or qualify a speciality by oral testimony.)

Ans. I was informed by Mr. Samuel Carusi and by Thornton Carusi that the daughters, Genevieve and Isolina, daughters of Samuel Carusi, were to be the devisees of Lewis Carusi, and I had seen a paper writing to that effect.

149 (The answer is objected to as incompetent and immaterial as testimony, and the last clause as not responsive to the question.)

13. Q. At the time Mr. Samuel Carusi employed you to prepare the deed in question, did he instruct you as to the terms and condition of that deed, and, if so, did you follow those instructions in its preparation?

(Question objected to as immaterial and calling for incompetent testimony.)

Ans. He gave me entire instructions as to what the terms and condition of the deed were to be, and I drew the deed strictly in accordance with those instructions, and when I read it over to him he approved of it.

14. Q. Did anybody accompany Mr. Samuel Carusi to your office at the time he gave you these instructions, and, if so, who?

Ans. He was almost always accompanied by Mr. Thornton Carusi, who, I think, was with him at that time also.

150 Cross-examination of witness by counsel of defendants:

15. Q. How long did you continue to reside in the District of Columbia since July, 1872?

Ans. Until March, 1875.

16. Q. Then where did you move to?

Ans. Philadelphia, Penn.

17. Q. Have you continuously resided there since that date?

Ans. I have retained my residence in Philadelphia, though I have travelled a great deal for nearly a year.

18. Q. In what business were you engaged in Philadelphia and while travelling?

Ans. I was engaged in the city of Philadelphia in the drug business, and while travelling, selling "Iron-clad paint."

19. Q. In 1872 you were a married man with a wife and several children?

151 (Objected to as immaterial, incompetent, and improper on cross-examination.)

Ans. I was married, and my wife had two children living.

20. Q. Did you take them with you to Philadelphia?

(Same objection.)

Ans. I did not; but brought them on in the March following, and took a residence for them there.

21. Q. Where do they now reside?

(Same objection.)

Ans. I do not know.

22. Q. Where did they reside when you last knew of their whereabouts?

(Same objection.)

Ans. On 9th street near H street, in the city of Washington.

23. Q. When was that?

152 Ans. Fifth of February last.

24. Q. When did you last see them?

(Same objection.)

Ans. On that day.

25. Q. How long have you been in this city?

(Same objection.)

Ans. Four days.

26. Q. When did you last hear of your family, or either of them?

(Same objection.)

Ans. Last Saturday.

27. Q. Where were they?

(Same objection.)

Ans. I was not told where they were, only that they were comfortably situated.

153 28. Q. Did you enquire where they were?

(Same objection.)

Ans. I did.

29. Q. Are they in this city?

(Same objection.)

Ans. They are.

30. Q. Have you been in the Army since 1872?

(Same objection.)

Ans. I have not been in the Army since 1865, nor any service of the Government in any capacity?

31. Q. Did you have a conversation with John McLean Carusi in the building know' as the Theatre Comique, on the corner of 11th and C streets, on last Saturday evening?

Ans. I had a conversation with Mr. John McLean Carusi, not in the Theatre Comique, but out-doors, and he read a letter to me in the

154 premises situate on the southeast corner of C and 11th streets. We went there for greater privacy.

32. Q. In that conversation did you tell Mr. Carusi that you handed it (the deed of trust) to Lewis Carusi after its execution?

Ans. I told Mr. Carusi that I laid the deed on the table, in front of Lewis Carusi, on which the deed was executed.

33. Q. Did you say to him at that time that you handed the deed to Lewis Carusi, who took it out of the room; that you do not know what became of it, and that you do not want to know?

Ans. I did not tell Mr. John McLean Carusi that Mr. Lewis Carusi took the deed out of the room. Mr. John McLean Carusi told me that his uncle Lewis did take the deed out of the room and put it away in a

box. I told him I did not know what was done with it, and I didn't care to know; that my connection with it was finished.

34. Q. Did you mention Samuel Carusi's name in that conversation?

155 Ans. I did; because I stated that he was present at the signing of the deed, while the letter referred to wished to refresh my memory to the contrary.

35. Q. Was that all you said about Samuel Carusi in that conversation?

Ans. No, sir; I spoke of him in connection with other papers which I have drawn for him relating to Lewis Carusi's business.

36. Q. Did you say to him anything about the person to whom you handed the deed?

Ans. I told him that I had laid the deed in front of Mr. Lewis Carusi, on the table. This was in response to the suggestion that I had handed it to Thornton, who had taken charge of it.

37. Q. Is that all you said to him as to the person who took the deed after you had taken the acknowledgment of Lewis Carusi?

Ans. I think the answers I have given cover the general points of the conversation. I cannot recollect all of the words.

156 38. Q. Did you also have a conversation with him in the Theatre Comique on that occasion?

Ans. My recollection is that we stepped just inside the door of the bar-room, which was crowded, when Mr. Carusi said "Let's go down to the corner," and we went down to the corner, and there he stepped aside and read me the letter.

39. Q. At the time you took the acknowledgment of the deed of trust at Mr. Samuel Carusi's residence, were there a number of other papers on the table?

Ans. There was no other paper on the table at the time—at the execution of the deed in trust—for my memory serves me. It was a small, round table; but Mr. Samuel Carusi held a bundle of papers in his hand, in which bundle he placed the deed of trust after its execution. He may have laid the bundle on the table to place the deed in trust in the bundle, having done which he carried them all out of the room together.

40. Q. Who left the room first, Samuel Carusi or Lewis Carusi?

157 Ans. Mr. Samuel Carusi left the room, and I remained in conversation with Mr. Lewis Carusi and Thornton Carusi.

41. Q. Then Mr. Lewis Carusi left?

Ans. Yes.

42. Q. Did Mr. Lewis Carusi leave the room by the same door that Mr. Samuel Carusi did?

Ans. I can't say positively, but I think there was a door in the nature of a cut-down window, leading out on a porch, through which he passed; it may have been only a window which he went to look out of.

43. Q. Then you don't know in point of fact whether Mr. Lewis Carusi left the room or not?

Ans. I turned to go away at the time he turned to go out what I presumed was this door.

44. Q. Now I ask you by which door Mr. Samuel Carusi left the room, whether by the door leading into hall, the door leading into the adjoining room, or the cut-down window that led to the porch?

158 Ans. He went out of the door in the northwest portion room, leading, I presume, into the hall; there were two doors in that partition separating the hall from the room, one in the east, and one in the west end—what you call a saloon parlor.

45. Q. You say it is what you call a saloon parlor, one single room?

Ans. Yes, sir; that is my recollection of it.

46. Q. Did Mr. Samuel Carusi leave the room by the same door by which you entered?

Ans. Mr. Samuel Carusi passed out through the westernmost door, and I came through the eastern parlor door.

47. Q. When Mr. Samuel Carusi left the parlor, and went into the hall, did he walk along the hall in the direction of the front door, or did he go in an opposite direction?

Ans. I do not know in which direction he went; the door was only a little ajar.

159 48. Q. When had you last seen Mr. Lewis Carusi prior to the time you took his acknowledgment to the deed of trust?

Ans. It had been some time, I do not know how long.

49. Q. Will you approximate the time?

Ans. I can't approximate the time, as I have no recollection when it was.

50. Q. Was it as long as a month before?

Ans. I think it was several months; I had not seen him for some time.

51. Q. When you took the acknowledgment of Mr. Lewis Carusi to the deed of trust, did you take his acknowledgment to any other paper?

Ans. I am under the impression I did. What it was I don't distinctly recollect; what it was, or its terms.

52. Q. Did Mr. Samuel Carusi take this other paper, which you think Mr. Lewis Carusi acknowledged on that occasion, into his possession with the deed of trust?

160 Ans. My impression is that Mr. Samuel Carusi took all the papers. I think the other paper was a power of attorney referred to in the deed of trust.

53. Q. In saying that your impression is that Mr. Samuel Carusi took all the papers, you do not wish to be understood to swear positively that he did take all the papers, do you?

Ans. I do not recollect to have seen any papers in the room after Mr. Samuel Carusi left, and I believe he took them all away with him.

(Answer objected to as not responsive, and question repeated.)

Ans. Yes; he took all the papers away.

54. Q. Why, then, did you say that it was your impression merely?

Ans. I don't think I said it was my impression merely; and I meant to convey the idea that it was my recollection of what had occurred.

161 55. Q. Your recollection is very distinct, is it not?

Ans. Yes; my recollection upon that point is very distinct.

56. Q. Was it an impression or a "very distinct recollection" that you took Mr. Lewis Carusi's acknowledgment to the power of attorney at the same time and place?

Ans. *I* recollection as to the power of attorney is not so distinct.

57. Q. Was it an impression or a "very distinct recollection" that you took more than one acknowledgment of Mr. Lewis Carusi at that time and place?

Ans. It is an impression, amounting almost to a conviction; it is in my mind but not very clear.

58. Q. Have you an impression amounting almost to a conviction what that other paper was?

Ans. As I stated before, I thought it was a power of attorney.

162 59. Q. Do you wish us to understand that after the lapse of six years that you can state positively which one of four persons present picked up that paper from the table and carried it from the room, and yet cannot state with equal positiveness the character of a paper, the acknowledgment of which was made before you in the capacity of a notary at the same time and place?

Ans. Yes, sir; I do.

60. Q. What was there in the affair that impressed the one fact on your mind and not the other?

Ans. The act of bundling up the papers together by Mr. Samuel Carusi, and his going out of the door with them was photographed on my memory, and I have thought of the picture a great number of times, and I shall never forget it.

61. Q. Was there anything peculiar in the manner in which Mr. Samuel Carusi left the room, or in the fact that the grantee in a deed of trust should take possession of it, that caused these circumstances to be photographed on your mind, to the exclusion of a more formal act of taking an acknowledgment to a paper?

163 Ans. I don't know that there was, and why I recollect one better than another I can't say, but I do.

62. Q. Is it not a fact that your recollection who took the papers from the room is owing in some degree to the fact that you have rehearsed the scene several times since the inst'ution of this suit?

Ans. No, sir; I recollected it very well as I do now before I ever heard of the suit; and do not recollect it any more vividly since.

63. Q. You have, however, related the circumstance before to-day, have you not?

Ans. I have, and just as I have now.

64. Q. How often, and to whom?

Ans. Twice; once to Mr. Howard in this city about two years ago, and once to Mr. Webb last week.

65. Q. In your conversation with Mrs. Howard two years ago, did you state that you took Mr. Lewis Carusi's acknowledgment to the

164 power of attorney referred to in the deed of trust at the same time you took the acknowledgment to the deed of trust?

Ans. Our conversation was confined entirely to the deed of trust.

66. Q. In your conversation with Mr. Webb last week did you allude to the power of attorney?

Ans. I said to Mr. Webb that I thought there was another paper but could not distinctly state what it was. My attention was not called to it.

67. Q. Is it an impression or a conviction amounting to certainty that you had not seen Mr. Lewis Carusi for a month or several months before you took his acknowledgment to the deed of trust?

Ans. I can't recollect of seeing Mr. Lewis Carusi for four or five months before his acknowledgment of the deed of trust.

68. Q. You are not certain of it, however, and for aught you can re-

member to the contrary you may have seen him three or four days before?

165 Ans. I can't recall it.

69. Q. You can't remember anything with certainty except the great, all-important fact which is photographed on your mind that Mr. Samuel Carusi carried the deed out of the room; all else is obscure. Is that what you want us to believe?

Ans. I recollect the circumstance referred to, because I have spoken of it some years ago and kept it alive in my memory by recent conversation, while the power of attorney has never been a matter of discussion.

70. Q. You wrote the power of attorney, didn't ?

(Counsel for complainant objects to the question, unless the power of attorney is put in evidence.)

Ans. I did write a power of attorney.

71 Q. To whom and from whom?

(Same objection.)

Ans. From Lewis Carusi to Samuel Carusi.

166 72. Q. What did you do with it?

(Same objection.)

Ans. If it was the same paper that was signed at the same time the deed of trust was, I gave it to Lewis Carusi.

73. Q. If it was not the same paper, what did you do with it?

(Same objection.)

Ans. My memory is not charged with that for the reason given above.

74. Q. You took Mr. Lewis Carusi's acknowledgment to it, didn't you?

(Same objection.)

Ans. I may have done it.

75. Q. Who was present when you took his acknowledgment to it?

Ans. I can't say.

167 76. Q. Where did you take Mr. Lewis Carusi's acknowledgment?

Ans. If I took it I took it at Mr. Samuel Carusi's house, where Mr. Lewis Carusi lived, and where I took the acknowledgment of the deed of trust.

77. Q. Who were present?

(Same objection.)

Ans. If it was the same paper referred to, the same parties were present, namely, Samuel Carusi, Lewis Carusi, Thornton Carusi.

78. Q. Did you prepare for Lewis Carusi to Samuel Carusi more than one power of attorney?

(Objected to as not proper on cross-examination.)

Ans. I think not.

79. Q. Can you now state with more certainty than before the recess we have taken, as to the time of the execution of the power of attorney?

168 (Same objection.)

Ans. I have conversed with no one on the subject and I believe now, as stated in my original answer, that it was executed at the same time the deed of trust was, if executed before me at all.

80. Q. Have you any doubt that the power of attorney and deed of trust were executed at the same time, if they were both executed before you?

(Same objection.)

Ans. They must have necessarily been executed at the same time.

81. Q. Why do you say they must have necessarily been executed at the same time?

Ans. Because I fail to recollect having seen Mr. Lewis Carusi for some months prior to the execution of the deed of trust.

82. Q. During the two or three years prior to 1872 and the year 1872, and two or three years following that year, did you draft and take
169 the acknowledgments of a great many letters of attorney and deeds of different kinds?

Ans. I did.

83. Q. Amounting to several hundred each year?

Ans. Yes, sir; that and examining titles was my exclusive business.

84. Q. At whose request did you prepare the power of attorney?

Ans. I prepared the power of attorney, as also every other paper referring to Mr. Lewis Carusi's business, at the request of Mr. Samuel Carusi.

85. Q. Did Samuel Carusi request you to prepare both papers at the same time?

Ans. I received directions from Mr. Samuel Carusi to draw the power of attorney before he told me to draw the deed of trust. It may have been early in the same day, or a day or two before. I prepared it in accordance with instructions.

86. Q. Which paper was acknowledged first?

170 Ans. If the paper referred to in my previous answers was the power of attorney, it was executed at the same time with the deed of trust; the deed of trust was acknowledged last in order.

87. Q. When you went to the table in Mr. Carusi' room, where you took the acknowledgment to the deed of trust, were there any other papers on the table?

Ans. No; it was a small, round, flat table.

88. Q. I show you a paper marked "No. 2," purporting to be a power of attorney, and ask you if the written portions of it, excepting signatures of Lewis and Thornton Carusi, is in your handwriting?

Ans. Yes, sir.

89. Q. Was it acknowledged before you at the time it bears date?

(Question objected to as improper on cross-examination, there having been no evidence adduced on direct examination, the question being
171 only proper as a question in chief by the defendants to their own witness.)

Ans. It was drawn by me about the day of its date with the expectation that it would be acknowledged on that day, but subsequently the deed in trust was ordered to be drawn, and this paper was acknowledged as of the date it bears, at the same time as the deed. It was out of my possession and I did not notice, or failed to make erasure of, the dates of which it now bears.

(The power of attorney just spoken of by the witness is here offered in evidence and marked "No. 2."

The plaintiff's counsel objects to the introduction of the power of attorney because it is new matter not referred to in the examination-in-chief.)

90. Q. Did you take Lewis Carusi's acknowledgment to this power of attorney on the 15th day of July, 1872?

(Same objection.)

Ans. I did not.

172 91. Q. How does it happen that you have certified upon it under your official oath and seal that Lewis Carusi, on the 15th day of July, 1872, personally appeared before you and acknowledged it to be his act and deed, if it be not true that he did so?

(Same objection.)

Ans. As I have stated before, the power of attorney was drawn in its entirety excepting signatures and taken away for review, and at the time of its execution, the great matter in hand being the deed of trust, I omitted clerically to erase the date in the power of attorney at the time of its acknowledgment.

92. Q. Was the deed of trust prepared by you and executed by Lewis Carusi on the same day you received instructions to prepare it?

Ans. I think not; I am almost sure it was not. It was executed on the day after or second day after it was drawn, as I recollect.

173 93. Q. Did you give the draft of the power of attorney or allow any one to take it from your possession before it was signed and acknowledged before you?

Ans. As I have stated, it was taken away for review by Mr. Samuel or Thornton Carusi, and retained until the time of its acknowledgment.

94. Q. Did you find it in Lewis Carusi's possession when you went to him to take the acknowledgment of the deed in trust?

Ans. No; My recollection is that it was produced out of the bundle of papers that Mr. Samuel Carusi had.

95. Q. Who affixed the revenue stamps to the deed of trust and power of attorney?

Ans. I think I did. I think I put the stamps before the papers were taken up to the house.

96. Q. Did you answer that question after I asked it and before it was fully written down, as follows: "I don't know; I guess I did; I think I bought the stamps."

174 (Objected to because the witness is not expected to answer the question until it is put to him by the examiner, and the answer recorded was the answer to the question after the examiner had taken it down.)

Ans. Yes; I think I did. I had not quite framed my answer.

97. Q. Who cancelled the revenue stamps and where?

(Objected to, unless the witness is shown the paper.)

Ans. I believe the stamps were furnished by me and cancelled by me in my office at the time they were drawn, so as to make less work at the house, and I only carried my notarial seal with me.

98. Q. Were you personally acquainted with the daughters of Samuel Carusi?

Ans. No, sir.

99. Q. Do you know their names?

Ans. I do. Genevieve and Isolina, and I have recently learned that Mrs. Caulfield is also a daughter.

175 100. Q. Where was Lewis Carusi living at the time you took his acknowledgment to the deed of trust and the power of attorney?

Ans. At the residence of Samuel Carusi, on Capitol Hill, near the Capitol building.

Witness re-examined by the counsel for the plaintiff:

101. Q. Are you a married man at this time?

Ans. I was divorced some time in January, 1877.

102. Q. How did the conversation between you and John McLean Carusi, about which you have testified, come about?

Ans. Mr. John McLean Carusi, I had been informed by my brother, I. N. Callan, was looking for me very anxiously, and that he had a letter from his brother Thornton containing an outline of what I should testify in this case, and asking him to meet him, John, that night. I paid no attention to the invitation to meet, as I had other matters on hand.

176 Later in the evening, as I was going uptown with a gentleman, I was informed by Mr. Harrington, shoe dealer, Pennsylvania avenue near 12th street, that Mr. Carusi had been there looking for me, and said he must see me. As I was returning homeward I met Mr. Carusi on 11th street near the Theatre Comique—above it—and he called out to me, and I walked over to him. We three stepped down just inside the bar-room of the Comique, when Mr. Carusi said this is no good place, for I want to see you privately, and I never drink in here anyhow, so we went down to the southeast corner of 11th and C streets, and entering the house on that corner, he took me aside and read to me Thornton's letter. I told him it did not accord with my recollection, except with one particular in regard to an expression of Mr. Lewis Carusi that he would never live to sign another paper.

103. Q. State the contents of the letter as near as you can.

(Counsel for defendants objects to this question as incompetent.

177 Plaintiff's counsel gives notice to the counsel for defendants to produce the letter testified about.)

Ans. The purport of the letter was that John should see me and refresh my memory of the fact that his father was not in the room when the deed in trust was acknowledged, and when it was acknowledged Lewis Carusi took it and carried it up to his own room, and that his father never knew anything about it until Lewis was dead. I told him my recollection of the matter was that his father was certainly present, and, moreover, that he had employed me to write the deed. In regard to Mr. Lewis Carusi locking the deed up after got out of my presence, I don't know anything about this. He then asked me if I was going to testify in this case. I was not quite sure, as I wanted to get away that night. He then said we will summon you. All through the conversation I avoided any controversy. I met Mr. Carusi again this morning, and, renewing the subject, he repeated to me what Thornton had written, and read the letter over again, and I told him I could not testify in accordance

178 with what was there written. He got very angry with me then, and said he would swear that I had told him the contrary Saturday night. I told him he was clearly mistaken, as the wish was father to the thought. The party that was with me was Samuel Floyd, and he did not hear the conversation.

104. Q. Did John McL. Carusi in either of these conversations make any appeal to you to testify in accordance with the terms of the letter from his brother Thornton; and, if so, what did he say?

Ans. John McL. Carusi said to me, "You are mistaken; here is Thornton's letter; he recollects all about it; you don't want to make my father

out a liar, for he told me on his dying bed that he had never seen the deed in trust until after Lewis was dead," and then made some remark in eulogy of his father; and I then told him I would have to testify from my own knowledge of the facts.

105. Q. Did he offer you any inducement to testify in any particular way?

179 Ans. No; only that when I was sent for I would be taken care of. I don't know how you would construe that.

106. Q. Were you familiar with the house on Capitol Hill in which Samuel Carusi resided?

Ans. I never was in the house before the execution of those papers, or since.

107. Q. Why do you remember the deed and its execution more than the power of attorney?

Ans. Because it was a larger and more important paper, and because the terms and conditions, and because it required some time in its preparation.

108. Q. Can you repeat the conversation you had with Mr. Howard two years ago about this matter?

(Objected to as incompetent and immaterial.)

Ans. It referred entirely to the deed of trust. The power of attorney was not referred to at the time; and what I said about the

180 deed of trust is exactly what I have testified to to-day.

109. Q. Did you have more than one interview with Mr. Samuel Carusi about the preparation of the deed of trust?

Ans I can't recollect; he was there several times during its preparation.

110. Q. How did you first learn the names of Mr. Samuel Carusi's daughters?

Ans. From having seen them mentioned in the will as the devisees of Lewis Carusi.

111. Q. When?

(Objected to as incompetent and immaterial.)

Ans. About the time of the execution of the deed of trust.

Recross-examination of witness by counsel for defendants:

112. Q. To whom, and when, did you first speak of your pre-

181 tended second interview with John McL. Carusi, which you have said was this morning?

Ans. I told Mr. Howard of it about 12 o'clock to-day.

113. Q. Is it Mr. Howard who married one of the daughters of Samuel Carusi?

Ans. Yes, sir.

114. Q. Where and in whose presence was this morning's interview with John McL. Carusi?

Ans. On Louisiana avenue just west of 6th street. There was no third person present.

115. Q. Did Samuel Loyd come away with you after your interview with John McL. Carusi on Saturday evening?

Ans. Yes, sir.

116. Q. Did you come here from Philadelphia to testify in this case?

Ans. Yes, sir.

182 117. Q. At whose request and when?

Ans. At the request of Mr. Howard referred to, and got here on Thursday morning.

118. Q. Why did you tell John on Saturday night you did not know you should testify in the case?

Ans. Because I did not wish to have any controversy about the matter with him.

119. Q. Have you any agreement with or promise with any one as to compensation for services in this case?

Ans. None whatever.

CHAS. CONS. CALLAN.

183 *Deposition of Anna M. C. Wright.*

HOWARD } In equity. No. 6078.
v. }
CARUSI. }

Met pursuant to notice at the office of John C. Poor, esq., ex'r in chancery, November 11th, 1878.

Present, counsel for plaintiff and defendant.

Miss ANNA M. C. WRIGHT, a witness for the plaintiff, being duly sworn, deposes and says as follows:

Direct examination:

1. Q. Please state your name and place of residence.

Ans. My name is Anna M. C. Wright. I reside in the city of Washington.

2. Q. Where did you reside in the year 1872?

A. I can't say; I never remember dates.

3. Q. How long have you been living in this city?

A. I have been living here about ten years.

184 4. Q. Then you resided here six years ago?

A. Yes; if I was not out West. I don't remember what year I went west. I have resided in the city for ten years, but I was in the West a couple of years.

5. Q. Are you acquainted with the parties to this suit?

A. Yes, sir; all of them.

6. Q. Were you acquainted with Mr. Samuel Carusi and Mr. Lewis Carusi during their lives, or with either of them?

A. Yes, sir; both of them.

7. Q. Did you ever reside in the family of Samuel Carusi?

A. Yes, sir; I did.

8. Q. Can you tell me about what year you resided in the family of Samuel Carusi?

A. Indeed I can't. I was there about four years ago, I think—three or four years ago.

185 9. Q. You say you were there three or four years ago; were you there before that time?

A. I was out West for nearly two years, and I was there before I went out West.

10. Q. Did you reside in the family of Samuel Carusi during the life-time of Lewis Carusi?

A. Yes, sir.

11. Q. Do you remember when Lewis Carusi died?

A. Yes, sir.

12. Q. How long before his death did you reside in the family of Samuel Carusi?

A. I don't know exactly. I reckon it was a year or two. I don't remember exactly.

13. Q. Was Lewis Carusi residing with the family of Samuel Carusi at the time of your residence with the family?

A. Yes, sir.

186 14. Q. Did you at any time during that year have any conversation with Mr. Lewis Carusi about his business matters?

A. Yes, sir.

15. Q. Did you have more than one conversation with him on that subject?

A. Yes, sir; I had several.

16. Q. In any of those conversations did Mr. Lewis Carusi say anything to you about what disposition he wished to make of his property at his death?

(Objected to as indefinite, incompetent, immaterial, and because plaintiff is a stranger in interest to the subject-matter inquired of.)

A. Yes, sir; he spoke of it several times.

17. Q. Please state as fully as you can what those conversations were.

(Same objection as above.)

A. Well, I can't recollect all of them.

187 18. Q. State as nearly as you can. State, if you can, the first conversation you had with Mr. Lewis *you had with Mr. Lewis* Carusi about the matters inquired of.

(Same objection as above.)

A. Well, he always wanted his property left to his brother during his life-time—his brother Sam; then, after his death, he wished it to be divided between his two nieces, who were single. He never wanted any other man to enjoy his property except his brother Samuel. He did not want any other males to enjoy his property; that was why he left it to his two nieces.

19. Q. Did Mr. Lewis Carusi himself, to your knowledge, ever make a will?

A. Yes, sir.

20. Q. Did you have anything to do with the preparation of that will?

A. No, sir.

21. Q. Did you ever see that will?

188 A. Yes, sir.

22. Q. Did he ever request you to put in writing his intentions with respect to the deposition of his property after his death?

(Objected to as incompetent and immaterial.)

A. Yes, sir; some time before he made his will.

23. Q. Please state what directions he gave you at that time, if any, with respect to his will.

(Objected to as incompetent and immaterial, and because plaintiff is a stranger in interest to the subject-matter inquired of.)

A. Well, just what I have said; he wanted to leave his property to his brother Samuel during his life-time, and at his death he wished it to go to his two single nieces.

24. Q. Had he any married nieces?

A. Yes, sir; he had a good many.

25. Q. I mean in Samuel Carusi's family.

189 A. Yes, sir; Mrs. Caulfield.

26. Q. What provision did he make for his married nieces, if any?

(Objected to as above.)

A. I believe he left Mrs. Caulfield the same legacy that he left his other married nieces, his brother Nathaniel's daughters; he left all of his married nieces a legacy.

27. Q. Did you prepare a paper containing these instructions?

(Same objected as above.)

A. Yes, sir.

28. Q. Did you show that paper to Mr. Lewis Carusi?

A. Yes, sir.

29. Q. Did you show it to Mr. Samuel Carusi or to any member of his family?

A. No, sir; I did not.

190 30. Q. Did you at any time inform Mr. Samuel Carusi or any of his family what the contents of that paper were?

(Objected to as incompetent and immaterial.)

A. I do not remember; I may have spoken of it.

31. Q. Do you remember whether the paper prepared by you was ever finally put into the shape of a will?

(Same objection as above.)

A. His will, I believe, was very much like the one I drew.

32. Q. Do you recollect what the difference between them was?

(Objected to as incompetent, immaterial, and because plaintiff is a stranger in interest to the subject-matter inquired of.)

A. I do not remember.

33. Q. Did you ever see the will that Lewis Carusi finally executed?

191 A. Yes, sir.

34. Q. By whom was that will written?

A. I do not know.

35. Q. Did you ever have any conversation about the will of Mr. Lewis Carusi with Mr. Thornton Carusi, one of the defendants in this suit?

A. No, sir; not that I remember.

36. Q. Did you ever hear Mr. Lewis Carusi speak of his nieces and nephews; and, if so, did he express a preference for either his nieces or nephews?

(Objected to for same reason as above.)

A. No, not particularly, except as to his single nieces. He said that they had no one to take care of them; that is the reason he left them the property. He hoped and wished they would never marry.

37. Q. Did you ever hear him speak particularly about his nephews with respect to his property, the sons of Samuel Carusi?

192 (Same objection as before.)

A. Well, as I said before, he did not wish any males except his brother Samuel to enjoy his property. That is why he did not leave his married nieces any more.

38. Q. Do you know about what time Mr. Lewis Carusi executed his will?

A. I think it was some time in the spring before he died. I am not sure, though. I was not there at the time.

39. Q. You mean you were not present when he signed it?

A. I was not at the house; I was away.

40. Q. Did you ever have any conversation with Mr. Lewis Carusi about his will after its execution?

(Objected to as above.)

A. Yes, sir.

41. Q. Please state the conversation as nearly as you can.

193 (Objected to because incompetent, immaterial, and because plaintiff is a stranger in interest to the subject-matter inquired of.)

A. He asked me if I did not think it was a good will; and he said he left his nieces sufficient to support them without being married. That was the conversation, as nearly as I can remember.

42. Q. Was the will before him at that time—at the time of this conversation?

A. I don't know; I did not see his papers.

43. Q. I want to know whether in the conversation about the will he did not then show it to you?

A. No, he did not; he sent the will to my room for me to read.

44. Q. He sent the will to your room for you to read?

A. Yes, sir.

45. Q. Can you recollect the terms of the will now?

A. No, sir; not at all.

194 46. Q. Do you remember that some time after the execution of the will Mr. Lewis Carusi made a deed of his property to his brother Samuel?

A. In the summer he made some kind of a paper—I don't remember what it was—which he sent to my room for me to read.

47. Q. In my last question I referred to the deed by which the property of Mr. Lewis Carusi was conveyed absolutely to this brother Samuel Carusi; do you remember that deed?

A. There was some kind of a paper made in the summer; I don't remember what it was. Then there was another one made just a few days before his death.

48. Q. That last deed is the one I referred to. Please tell me what you remember about this deed.

A. I believe the last deed conveyed his property to his brother Samuel. I did not read it at all. I merely saw the paper.

49. Q. Did you have any conversation with Mr. Lewis Carusi
195 about this last deed. And, if so, please state what that conversation was, and how it came about.

(Objected to because incompetent, immaterial, and because plaintiff is a stranger in interest to the subject-matter inquired of.)

A. I hardly remember. Mr. Lewis Carusi was very anxious to have it fixed so as to prevent a lawsuit.

50. Q. Did you go to Mr. Lewis Carusi about this deed?

A. Yes, sir.

51. Q. At whose instance?

A. Mr. Samuel Carusi's.

52. Q. Why did Mr. Samuel Carusi want to go to Mr. Lewis Carusi?

A. I do not know.

53. Q. What did Mr. Samuel Carusi ask you to say to Mr. Lewis Carusi?

196 (Same objection as above.)

A. I don't remember exactly.

54. Q. Tell me as nearly as you can what instructions you received from Mr. Samuel Carusi.

(Same objection as above.)

A. I believe it was simply to say that it would prevent a lawsuit?

55. Q. Did Mr. Samuel Carusi ask you to say anything to Mr. Lewis Carusi about it?

(Same objection as above.)

A. No, sir. Only to mention it.

56. Q. Did he ask you to urge him to sign it?

A. No, sir.

57. Q. Did he give you any reasons to induce Mr. Lewis Carusi to sign this absolute deed?

(Same objection as above.)

197 A. No, except that it would prevent a lawsuit, as I said before.

58. Q. How was this deed to prevent a lawsuit?

(Same objection as above.)

A. I do not know.

59. Q. Did not Mr. Samuel Carusi tell you to tell Mr. Lewis Carusi that this deed would enable him the better to hold the property for the benefit of his nieces, the daughters of Samuel Carusi?

A. No, sir; he did not say anything of the kind.

60. Q. Did not Mr. Samuel Carusi tell you to tell Mr. Lewis Carusi that this absolute deed would add strength to the terms of the will?

A. No, sir; he simply said, as well as I can remember to say, make the deed.

61. Q. You were to ask him to make the deed?

A. Yes, sir; that was all; I think that was it.

198 62. Q. Did you know why he asked you to go to Mr. Lewis Carusi and ask him to make the deed?

(Objected to as incompetent and immaterial.)

A. To prevent a lawsuit.

63. Q. Why did he not ask him himself?

A. That I do not know. I don't think he and his brother ever had any conversation about the will or the deed or the property in any way.

64. Q. At the time that this absolute deed was made do you know whether Mr. Samuel Carusi was aware of the existence of the will made by Lewis Carusi?

(Same objection as above.)

A. I could not swear to it, as I never had any conversation with him about it. I do not know whether he knew it or not.

65. Q. Was not the fact generally known in the family that Mr. Lewis Carusi had made a will?

199 (Objected to as incompetent and immaterial.)

A. It was generally known. I suppose Samuel Carusi knew it.

66. Q. Was not the matter of the will and the deed and the disposition of Mr. Lewis Carusi's property generally known and the subject of frequent conversations among members of the family of Mr. Samuel Carusi?

(Objected to as leading, incompetent, immaterial.)

A. That I don't know, as I left there two or three days after the deed was made, and was gone most two years.

67. Q. Since the death of Lewis Carusi, and since your return to this city, has not this matter of the disposition of Mr. Lewis Carusi's property been the subject of conversation between you and the members of the family?

(Objected to as incompetent, immaterial, and impertinent.)

A. Yes, I believe so.

200 68. Q. Were you present when the last deed made by Lewis Carusi was executed?

A. Yes, sir.

69. Q. Please state what took place, as nearly as you can.

A. There was a good deal took place.

70. Q. Please state what occurred in respect to this deed.

(Objected to as incompetent, immaterial, and because plaintiff is a strange' in interest to the subject-matter inquired of.)

A. The notary public, I think his name was Walters or Walter, told him what the paper meant, and asked him if he was willing to sign it. He said he was perfectly willing. That is about all, I believe.

71. Q. Did he sign it?

A. No; he got up; his hand trembled so, and told him to sign it and he would make his mark.

201 72. Q. Did he get up himself?

A. No; I believe some of the gentlemen present assisted him.

73. Q. Was anything said at that time about the nature of the conveyance?

A. Yes, sir.

74. Q. Can you tell us what it was?

(Objected to as incompetent and immaterial.)

A. Just what I said before—that the notary public explained to him what the paper contained; he did not read it, but explained it; that it gave his brother Sam all his property. I think that was about it.

75. Q. Was any mention made at that time about the fact that Samuel Carusi was to hold the property in trust in any way?

A. No, sir; as well as I can remember, what I have mentioned is all that was said.

202 76. Q. Subsequently to this time did you have any conversation with Thornton Carusi about the disposition made by Mr. Lewis Carusi of his property?

(Same objection as above.)

A. I do not remember.

77. Q. Have you had any conversation with Mr. Thornton Carusi recently, since the death of his father?

A. No, sir.

78. Q. Did you have any conversation with him before his father's death, after the making of his father's will?

(Objected to as above.)

A. I don't remember. I think I did see him once.

79. Q. Do you remember what took place at that interview with respect to the matters inquired of?

A. I do not remember.

A. M. C. WRIGHT.

Adjourned until Wednesday, Nov. 13th, 1878, at 18th & K st. NW.

203 *Deposition of Isolina E. Howard.*

HOWARD
vs.
CARUSI.

JANUARY 29TH, 1879.

Met pursuant to notice at the office of John C. Poor, esq., examiner, No. 416 5th street NW., Washington, D. C.

Mrs. ISOLINA E. HOWARD, a witness for the plaintiff, being first duly sworn, deposes and says as follows:

Examination-in-chief by Mr. WEBB:

Q. Please state your name.

A. Isolina E. Howard.

Q. Are you the party plaintiff to this suit?

A. Yes, sir.

Q. Where did you reside in 1872?

A. With my father on Capitol Hill.

Q. Who was your father?

A. Mr. Samuel Carusi.

204 Q. What relation was Lewis Carusi to you?

A. My uncle.

Q. Where did he reside in 1872?

A. With my father on Capitol Hill.

Q. During the residence of Mr. Lewis Carusi at your father's do you know who managed his business?

A. Yes, sir; my father managed his business, attended to everything, signed checks for him and everything—managed all his business.

Q. Did your father ever have any assistants in managing the business; if so, who?

A. Well, sir, he generally had my brother Thornton Carusi to assist him when he did not feel well or wished to go down the city; he would generally get Thornton to attend to things for him. If any papers were to be written out he generally got Thornton to do it.

205 Q. During the time that your uncle Lewis Carusi lived at your father's house did you ever hear him declare his intentions as to the disposition of his property after his death?

(Question objected to because incompetent and immaterial.)

A. Yes, sir.

Q. State what that declaration was.

(Question objected to because incompetent and immaterial.)

A. Well, he always said he intended it for his three nieces—for pa's three daughters, and that he never wanted any one else to have a dollar of it; and that if he thought that any one of Sam's sons would ever enjoy one copper of it he would sink it in the Potomac and die poor before they should have it. I heard him state this repeatedly.

Q. Do you know at what time your uncle Lewis executed the will that has been exhibited with the papers in this case?

206 (Objected to as immaterial and because the paper must speak for itself in that regard.)

A. I know it was in March, 1872; I don't know the date exactly.

Q. Were these declarations to which you have testified made before or after that date?

A. Why, before and after too. He always said it after and before; he said it up to the time of his death.

Q. Do you know whether other members of the family were aware of these declarations?

(Question objected to in that form because asking for a conclusion from facts instead of facts.)

A. Why, certainly, sir. It was commonly spoken of in the family.

Q. Did your uncle Lewis Carusi make these declarations to other members of your family beside yourself?

207 A. Why, yes, sir; certainly; he spoke of it to every one he met, strangers and every one else. It has been know' for years

Q. Do you know who wrote the will exhibited in this case?

(Objected to because immaterial.)

A. Yes, sir; my brother Thornton Carusi wrote the will.

Q. Have you seen the original will?

A. Yes, sir; I have, and I know the handwriting perfectly well.

Q. Did you ever have any conversation with Thornton Carusi about the will? And, if so, please repeat it.

(Objected to because as to the other defendants it is immaterial and in the case is incompetent.)

A. Well, I don't understand exactly what you mean.

208 Question repeated, and counsel adds: I mean did you ever have a conversation with Thornton Carusi as to the manner in which that will was written?

(Same objection as last above.)

A. I have heard Thornton and Miss Nanny Wright speak of that will and of the way that will was written. Miss Wright was not at home when the will was written. When she returned Thornton went up in her room—I was there with her—and they read the will over together in my presence. Miss Wright said: "Thornton, this will is not as Mr. Lewis wanted it; he did not want Mr. Samuel to dispose of the property as he pleased; he wanted it, after his death, left to Samuel's daughters." Thornton said: "Nan, you don't understand these terms of law; we could not draw up a will in the blunt way you drew that for Lewis." Then they went on reading the will.

(Answer objected to as incompetent because Mr. Thornton Ca-

209 rusi is incompetent to explain Mr. Lewis Carusi's intentions, and because it is an attempt to vary a written instrument by verbal testimony.)

Q. Did your uncle Lewis Carusi, ever speak to you about his will after he signed it? And, if so, please repeat what he said about it.

(Objected to as incompetent, and because it is an attempt to vary a written instrument by parol testimony.)

A. Why, he often asked me had I seen his will, did I think that that money was fixed up, tied so tight that those damned boys would never get a copper of it; and said if he thought they would well—he would sink it in the Potomac, as he had said a thousand times before. He asked me this repeatedly, and Miss Wright the same thing.

Q. Did you have a conversation with your uncle Lewis Carusi as late as July, 1872, about his property; and, if so, can you state that conversation?

(Objected to because incompetent and immaterial.)

210 A. Yes, sir. We were sitting together in July. I was telling him about a friend of mine who was coming to see me in the winter, and he said, "I shall be gone before then; then you will have a fine time with all your money." I said, "I guess not, uncle Lewis; I don't think I have any money." "Yes," he said, "you have all; you and Vevie now have all. Have you seen that deed?" "No, sir," I said. "Then," he said, "tell Sam to show it to you. Tell him I wished you to see it." "Very well, sir." But I never asked to see it.

(Answer objected to as an attempt to explain and vary by parol testimony the contents of a written instrument.)

Q. Have you any means of fixing the date of this last conversation about which you have testified; and, if so, what?

A. Well, sir, it was in the latter part of July, because I had been sick nearly the whole of July, the whole first part of it. I was just sitting about the house, down-stairs. It was very warm. I was sitting in the little passage near the parlor; uncle Lewis was sitting with me to keep me company. That's why I know it was the latter part of July.

211 Q. Who do you mean by Vevie in your answer to the last question but one?

A. I mean my sister Genevieve, one of the parties to this case, I suppose, though she says she is not.

Q. Do you know what deed your uncle Lewis referred to in the conversation about which you have testified?

(Objected to as incompetent, immaterial, and as asking for a conclusion from facts instead of facts.)

A. Yes, sir; I know it was the deed made that month, because he spoke of it himself and I heard it spoken of in the house.

Q. Did you ever speak to your father about that deed afterwards; and, if so, what was said?

(Question objected to as incompetent and immaterial.)

A. Yes, sir; when we lived in Waverley Terrace, one evening pa and I were talking about this old lawsuit, and I said that I did

212 not see how uncle Nat could ever take the money from pa, since uncle Lewis had made a deed of trust giving it all to us. Pa said, "Hush, Lina, my dear; you must never mention that deed. You must keep these things to yourself."

Q. What do you mean by the old suit?

A. I mean between pa and uncle Nat about uncle Lewis' will. Wa-

verly Terrace is in Baltimore, where we lived after my uncle Lewis' death.

Q. Have you any recollection that another deed was made by your uncle Lewis Carusi to your father before his death?

A. Yes, sir.

Q. Were you present at a conversation between your father and Miss Wright in regard to this last deed? If so, repeat what took place, as nearly as you can.

(Question objected to as incompetent and immaterial.)

213 A. Well, I think he sent for Miss Wright. When she came she went into the parlor, and pa was standing there. He told her that she must go and tell uncle Lewis that he had better make this last deed, this deed conveying the property to me. Pa said, "Because, tell him, if he makes this deed," explaining to Miss Nannie about the deed, "it will strengthen the will. If he don't make it, Nat will surely break the will." Miss Wright then went to my uncle Lewis' room; I went with her; he was then in bed. She told him what pa had told her as nearly as she could. Uncle Lewis said, "No, I don't want to sign any more papers. I don't want to be bothered with any such thing." Miss Wright said, "I will tell Mr. Samuel what you say, and see what he says." She left the room; I left with her and went upstairs; she went to pa; I did not go back; I don't know what took place afterwards.

Q. Were you at home when this last deed was executed by your uncle Lewis?

A. Yes, sir.

214 Q. Did you see your uncle Lewis that day? If so, please state what his condition was, and state in this connection all you know about the execution of that deed.

(Question objected to because incompetent as far as witness is concerned, and because it asks her to testify as to the validity of a written paper which it seems she has an interest to destroy.)

A. I was in and out of my uncle's room all that day. My uncle was in a very feeble condition. About two o'clock in the day, pa, who had been out, came back home. There were several gentlemen there. Mr. Fletcher was there, and there were two other gentlemen whose names I do not recollect; I think I heard their names, but I do not remember them now. Pa came in with one of them himself. They were all standing in the parlor talking. I was in the hall and then went into the sitting-room. At that time uncle Nat was with my uncle Lewis in his room. Pa came to me and said, "Go in and tell uncle Nat that Father Wiget
215 wants to hear Lewis' confession." I went and told uncle Nat what pa said. He said, "Very well; I will come out." He came out, and pa and uncle Nat left the house by the side door near uncle Lewis' room and went together up North A street. I saw them from the sitting-room. Miss Wright came from the parlor with those other gentlemen, and they all went in uncle Lewis' room. I did not see them any more until they came out, and then I saw Mr. Fletcher in the hall for a moment.

Q. From what you saw of your uncle Lewis' condition that day did he appear to be able to execute a paper of any kind?

(Objected to because the opinion of this witness, so far as the evidence

shows, is manifestly of not the slightest account, and because the question is incompetent.)

A. No, sir.

Q. Do you remember anything about the fact that a proposition was made to your father in 1876 to compromise the matters in this suit; do you know the fact?

216 (Question objected to as assuming the existence of the fact, and because immaterial.)

A. Yes, sir; I do. My sister Genevieve and myself read the letter Mr. Howard wrote to Mr. Webb with regard to the matter, and approved of it.

Q. Were you at any time present at a conversation between your brother Thornton Carusi and your father in regard to the accounts between your father and your brother respecting the estate of Lewis Carusi? If so, please state when and where the conversation took place, and what occurred.

(Objected to as incompetent and immaterial.)

A. In Waverly Terrace, in Baltimore. I heard pa ask Thornton about it. He said, "Thornton, I would like to see your receipts and your book. I want to look over the book with you." Thornton told him, "No, sir; I'll be damned if I show any man my books and receipts. You will just have to take my word for it." I walked out of the room and left them talking.

217 Q. After the death of your uncle Lewis Carusi did you ever have any conversation with your brother Thornton as to the disposition he had made of his estate? And, if so, please state it as nearly as you can.

(Objected to as incompetent in reference to the other defendants than Thornton, and as immaterial in reference to that defendant and to all, and as tending to affect a written paper.)

A. Yes, sir; we were walking together one evening and were speaking of uncle Lewis and his affairs, and I said, "Thornton, do you know uncle Lewis did not want to make that last deed? You know Miss Wright had to persuade him a great deal before he would do it." I said "He said that pa might be persuaded to give some of his money to those boys." And Thornton said, "Well, if the old man should try to do anything with that money I will prove him a trustee, and a trustee cannot buy the property. If he attempts to do anything with it I will prove him a trustee." *The* He related something about a trustee who had bought

218 the property he held in trust, and afterwards it had been taken away from him, and he said, "I will serve him that way if he attempts to do anything with it." He said so more than once.

(Answer objected to as incompetent.)

Cross-examination by Mr. HINE:

Q. How many times has your husband read questions similar to those (indicating those in the hands of Mr. Webb used in the examination-in-chief) to you and taken your answers to them?

A. My husband asked me once of those things and I told him. I often spoke to him of them before my father's death.

Q. When did your sister Genevieve tell you last *tell you* that she had no interest in this suit?

A. She told me so all along.

Q. When did she last so state to you?

219 A. I can't remember perfectly. I think the last time was in last June, when she came to see me at my house. I have not been home to see my sister, because those I met there have grossly insulted me several times, so that I think the last time she told me was in June last, at my own house. She talks of it every time she meets me, and consequently I cannot remember the exact date.

Q. Who was present when Lewis Carusi spoke to you about leaving his property to you and Genevieve?

A. Many persons. Arthur, the boy that lived with him, was present. Mr. Plant has been present; I don't know his first name. Miss Wright has been present. A great many persons have been present.

Q. Did you hear him state at different times that he intended to leave his property to other persons?

A. I heard him say that he intended to leave it to my sister Mrs.
220 Caulfield, until they had some falling out, and he said he would not leave her any.

Q. When was that?

A. Some time before he died, when he was living in our house. He was there a year before he died, if I remember rightly; something like a year.

Adjourned until to-morrow, Jan'y 30th, 1879.

JANUARY 31ST, 1879.

Met pursuant to adjournment of yesterday, at the office of John C. Poor, esq., examiner.

Present, counsel for plaintiff and defendant.

Before proceeding with the cross-examination Mrs. Howard desires to say that she has seen the transcript of her testimony given at the last session, and has read her answer as therein given to the question propounded by counsel at the last session asking her as to the declarations made by her uncle Lewis Carusi concerning the disposition of his property
221 after his death, and that she thinks she said, and she certainly meant to say, and she desires now to say, in further answer to that question, that in all of these declarations her uncle Lewis always said that he desired Mr. Samuel Carusi, his brother, her father, to enjoy the property during his life.

Cross-examination (continued) by Mr. HINE:

1. Q. Have you carefully read the testimony you gave at the last session?

A. I read it with Mr. Webb carefully over, every word of it.

2. Q. Is there any other correction you desire to make in it?

A. There are several things I thought I said which I did not see in it when I read it over. I remember there was one thing that I thought I said in saying that pa told me not to speak of that deed or of his affairs to any one; he said "especially to Howard," meaning my husband. I did not see that in the testimony this morning.

222 3. Q. Is there anything in the testimony as having been said by you that you wish to correct?

A. No, sir; I think not.

4. Q. How long did you reside in the same house with your uncle Lewis?

A. I think it was a year. I can't remember positively the month uncle Lewis came to our house, but I think it was the fall before he died.

5. Q. Did your sister Genevieve reside with you in the same place?

A. Yes, sir.

6. Q. Does your mother reside in the city?

A. Yes, sir; she is boarding at Miss Wright's, at Miss Nannie and Miss Hallie Wright's. They are keeping house together.

7. Q. How long has she been residing in the city?

A. Since June, the 15th of June.

223 8. Q. You visited her occasionally, I presume?

A. When ma was keeping house I was there, I think, twice after I came to Washington. I came on the first of October. I have been at Miss Wright's three times, I suppose, within the last two or three weeks.

9. Q. You visited her, then, frequently here in the city, and saw her within the past few weeks?

A. I have been there the times I mentioned since the first of October, when I returned. If I have made a mistake in the number of times, its once only. I had been at her house before she moved twice; I came on the first of October; she moved on the 15th of October.

10. Q. Of what year?

A. Last year, 1878.

11. Q. Your first visit since you came to this city was about two weeks ago?

224 A. O, no, sir; before she moved to Miss Wright's, which was the 15th of October; I came here on the first of October. I was there two or three times, I can't be positive which, before she moved to Miss Wright's. Then I did not go to see her again, did not go to see her at Miss Wright's, until—yes; I beg pardon; I did; once shortly after she moved there, but I did not see ma; she was not at home. I saw my sister Genevieve and Eugenia Carusi, my brother Pollando's child.

12. Q. When was it that you heard your uncle Lewis say that he intended to give his property to Mrs. Caulfield, your sister?

A. Well, sir, I can't tell you the year exactly, but it was all along before they had that falling out about some business affairs of their own, which I really don't know anything about.

13. Q. About what time was it they had what you call a falling out?

A. I can't tell you the year exactly, but I think it must have been either three or perhaps four years before uncle Lewis' death.

225 But really I can't tell you. It is impossible for me to remember those things.

14. Q. Was it in the summer or winter?

A. It must have been in the spring, because I know ma was going to live on the farm. I think it must have been in the spring, though I can't say exactly.

15. Q. Where was your uncle Lewis then living?

A. Down at the theare—the hall.

16. Q. Where was Mrs. Caulfield then residing?

A. I can't tell you, sir; I was not in the city at the time.

17. Q. Where were you residing?

A. I was residing at the Sisters of Notre Dame in Baltimore. I was parlour boarder, studying music, at Notre Dame.

18. Q. How long before your uncle Lewis' death was it that you and Miss Wright went to his room and carried a message from your father to him about a deed?

226 A. Well, I suppose, I can't remember exactly, it was in October; I feel sure it was in October, but I can't tell you the date; it must have been in October or the very last of September; I can't tell you the date exactly.

19. Q. Did he then understand what he was saying and doing?

A. Well, sir, I presume he understood. Miss Wright had to make a good deal of explanation to him about the deed.

20. Q. He seemed to understand what was said to him?

A. Yes, he seemed to understand what was said then, after she had explained a good deal to him, though he was sick in bed at the time.

21. Q. Did she say to your uncle Lewis pretty much what your father had requested her to say to him?

A. Yes, sir; as near as she possibly could I think she said almost exactly what pa told to her.

227 22. Q. Was he emphatic in refusing?

A. Yes; he said, "I don't want to sign any more papers; I have signed all I want to sign—all I am going to sign."

23. Q. Where were you in July when you say the deed of trust was executed?

A. I was in my own room. I had been sick and I had not been downstairs, though I was not in bed. I was walking around between my room and the next room, ma's room, adjoining, and in the hall.

24. Q. Who were at home that day; do you know?

A. Yes, sir; they were all at home. Yes; my sister Genevieve was at home; ma was at home; Thornton and pa and uncle Lewis, they were at home.

25. Q. In any of the conversations that you say you remember having with your uncle Lewis in reference to your own interests was anything said about providing for your mother?

228 A. No, sir; unfortunately uncle Lewis hated my mother with a deadly hate. He would never have provided a cent for her.

26. Q. Was he a man at all changeable in his likes and dislikes?

A. No, sir.

27. Q. Did Mrs. Caulfield sometimes visit him during the last two or three years of his life?

A. Yes, sir; she visited him; certainly. He was always polite to her. But several times he spoke of her as soon as she left the room—very unkind things.

28. Q. You attempted to disabuse his mind in reference to her, did you?

A. Yes, sir; and several others did too.

29. Q. When were you married to Mr. Howard?

A. In June, 1875; three years last June.

229 30th Q. When did you first speak with him with reference to your claims?

A. I spoke to Mr. Howard once just before I was married, just a short time before I was married.

31. Q. Who opened the conversation on that occasion?

A. I did, sir, myself. Mr. Howard never spoke of anything of the kind to me.

32. Q. Whenever the subject was mentioned between you you opened the conversation, did you?

A. Yes, sir; I talked of it constantly; talked of my wrongs.

33. Q. You thought about it and talked about it a great deal during the last six or seven years?

A. Yes, sir; and long before my father's death I said always that if father willed that money left to my sister and myself away, I would enter a suit. I said so for years before I was married.

34. Q. Did you ever so state to your father?

230 A. I told my father so once. He told me to mind my business; he would do as he pleased.

35. Q. What is your age now?

A. I don't think it is necessary to tell my age, Mr. Hine; I don't wish to do it, and I shall not do it. I am of age to testify and I know perfectly well what I am saying.

36. Q. Do you decline to state how old you are?

A. I decline to answer this question, as I don't consider that it has anything to do with this case.

Mr. WEBB. You may as well answer the question, Mrs. Howard.

A. No, sir; I don't intend to answer it.

37. Q. Why will you not state your age?

231 A. Simply because I don't think it is at all necessary for you to know how old or how young I am. Besides it has not been asked any of the other witnesses; consequently I won't answer it.

38. Q. How do you know it has not been asked of the other witnesses?

A. Because I know it was not.

39. Q. Were you present at the examination of other witnesses?

A. No, sir; no one told me either. I asked the question, "Was Miss Wright asked how old she was?" I think, of Mr. Webb. He laughed and said, "No."

40. Q. Who is the older, you or Genevieve?

A. My sister Genevieve.

41. Q. Are not you the youngest in the family?

A. Youngest living; yes, sir.

42. Q. Did your uncle Lewis always couple Genevieve's name with yours when speaking of the disposition of his property?

232 A. Always, sir.

43. Q. She refuses to join you in the suit, does she not?

A. Yes, sir. Genevieve says there has been so much villainy carried on that she will not have anything to do with the money either one way or the other. She will not mix herself in it at all. She has been willing to give it all up, wanted to give it up, but was not permitted.

44. Q. Who would not permit her?

A. Well, I can't say she was not permitted; she was advised, she told me, by Judge James.

45. Q. What do you mean by villainy; in your answer?

A. Well, sir, I know there has been villainy. Pa was influenced and advised. There were a great many charges made in different papers, etc., etc., which she did not wish to have anything to do with. Uncle Lewis was deceived.

233 46. Q. I asked you what you meant, not what she said.

A. That is what she said herself to me.

47. Q. How many sisters have you?

A. I have two, Mrs. Caulfield and my sister Genevieve.

48. Q. How many brothers?

A. Three.

49. Q. Your sisters and brothers were worthy of Lewis' bounty, were they not?

A. Well, sir, my brothers, I do not consider, had any right to uncle Lewis' bounty. He especially wanted them never to have a dollar of it; always called them every name—names that I would not like to repeat.

50. Q. How old was your uncle Lewis when he died?

A. I don't know; have no idea, sir.

234 51. Q. About how old was he?

A. Really I don't remember his age at all; I don't recollect the age that was put in the paper.

52. Q. How old was your father when he died?

A. I don't know, sir. There was a dispute on that point between ma and several members of the family.

53. Q. About how old was he?

A. Well, some said he was eighty-two; some said something else. I could not tell you about how old he was. That was the age they put in the paper, I believe; I don't remember at all.

54. Q. Who was the elder, your father or your uncle Lewis?

A. My father was the oldest, my uncle Nat next, and then uncle Lewis. Uncle Lewis was the youngest of all three.

235 55. Q. What was your opinion as to the age of your uncle Lewis when he died?

A. I don't remember. It is a long while to remember everything of that kind. Some things I remember perfectly; they are indelibly fixed upon my memory; I will never forget them; other trifles I let pass.

56. Q. You resided in Baltimore up to the time that you left, the 1st of October last?

A. I was in Baltimore County during the summer, from June to October.

57. Q. When did your father die?

A. In December.

58. Q. Of what year?

A. Last year. I mean he has been dead a year in last December.

59. Q. Before his death did you and your husband live at his house?

A. Yes, sir; we lived there after I was married. I came from

236 Cincinnati on the 11th of August, at my mother's special invitation. I stayed there until the first of February; then I left and went to house-keeping. After the death of my babe I insisted upon going home to my mother, strictly against the wishes of my husband, who wanted and told me not to go. I stayed there until—I don't remember this perfectly—the latter part *or* October or first of November; it wasn't more than a

week's difference; I can't tell you exactly; I was there a day or two and then went home. Stayed then at home. Then again in June, by ma's invitation, against my husband's wishes, again I went home, either on the 1st of June or last of May, and I stayed there until pa put her out of the house in October. I could have gone if he had given me warning that he was going to do it. I left there on the 4th of October and I have never been home since, not to stay one day or one night, and I will never go home again.

60. Q. Why do you have such a feeling about your mother?

237 A. I love my mother dearly, Mr. Hine; none more so. I know that she was moved to do very unkind things to me only by the influence she is under. Of that I am convinced. I have no ill-feeling towards ma at all. I am willing to share everything with her.

61. Q. Do you intend to say that you have discarded your brother and sisters?

A. No, sir; I have not discarded my sisters. My brother Thornton I love dearly, and regret the differences between us, but my other brothers I have discarded for many years, for their unkind treatment of me and what they have spoken against me. I have never discarded my brother Thornton, and spare him all I can. I could say many things about him that I conceal—many.

62. Q. You spoke of a will having been executed; have you read that will?

A. Yes, sir; I read the one Miss Wright drew and the one that Thornton Carusi wrote.

63. Q. Before it was signed?

238 A. Before and after too.

64. Q. Did you read the bill that you signed before you brought this suit?

A. Every word of it, sir. Read every word of it myself, and I then read it with my sister Genevieve. We read it together, at my house on Gilmore street—251 Gilmore street.

65. Q. When did you first learn what a deed of trust is?

A. Well, from what my brother Thornton said the evening we were walking together on Capitol Hill, then I understood perfectly what the deed of trust was.

66. Q. Was that the first time you ever heard of a deed of trust?

A. Oh, no, sir.

Mr. WEBB. Mrs. Howard does not understand that Mr. Hine speaks of deeds of trust in general, and not of the deed of trust.

239 A. I understood perfectly what a deed of trust was, but I thought you meant the deed of trust.

67. Q. When did you first learn what a deed of trust was?

A. I have known what a deed of trust was ever since I could understand what I was studying in school, of course.

68. Q. Can you tell us what your idea of a deed of trust is?

A. Well, sir, I decline explaining exactly this thing to gentlemen like those before whom I am at present. I understand that when a man is given a deed of trust he is given a deed that constitutes him a trustee, and that he then holds the property in trust for others.

69. Q. You have stated that you are advised that a trustee could not buy the property he holds in trust. Who so advised you?

A. My brother Thornton.

240 70. Q. Is that the first time you ever heard of that?

A. No, sir; I told you I heard it spoken of 'round the house; rather I heard pa and Thornton speak of it.

71. Q. That a trustee could not buy?

A. No, sir. That was the first time when Thornton told me of it on that evening that we walked together. I very rarely speak on such subjects, consequently I know very little of them. My tastes run in another direction. Law business or anything of that kind I knew very little about till my brother began the study of the law; then he talked of such things very frequently around the house.

72. Q. Have you frequently talked the matter over about a trustee's power to purchase property held by him in trust since Thornton told you?

A. Why certainly, sir. Talked of it with my sister Genevieve, with Miss Wright, who also said so. Said of course a trustee could not

241 purchase the property he held in *in* trust. I talked of it with my husband. I don't know that I ever mentioned it to Mr. Webb.

73. Q. Did your uncle Lewis ever declare that he would give his property to you alone?

A. Why certainly not. He never did.

74. Q. Did you ever hear him say that he intended to give his property to any other member of your family or of your uncle Nathaniel's family?

A. Yes, sir. I heard him tell Miss Nannie Wright that uncle Nat had made him promise to leave his girls something and that he intended to do it, and that he hoped thus to prevent a law-suit.

75. Q. Hear him say so frequently?

A. Yes, sir. I heard him say so two or three times.

76. Q. Hear him declare his intention to leave his property to other members of Nathaniel's family?

A. No, sir.

242 77. Q. Did you intend to say in the bill you filed in this case that your father conspired to defraud and cheat you?

A. No, sir. Though I suppose it amounted to the same thing. I said that pa attempted to set up that last deed and to provide for his sons against the wishes of my uncle Lewis.

78. Q. Your father supported and educated you, did he not?

A. He did, sir, up to the time, some two or three years before uncle Lewis' death, when pa attended to all his business and devoted himself entirely to that; then of course the support came from my uncle Lewis. Uncle Lewis sent me to school for three years; paid for my education and my clothes.

79. Q. Did the money pass through your father's hands for that schooling and for your clothes?

A. Well, pa always signed the checks. Once I got the money myself from Riggs' bank. Uncle Lewis gave me money for clothes

243 himself several times. Miss Wright and myself went down to his room and he gave me the money. Miss Hallie Wright went with me.

80. Q. How long before your uncle Lewis' death was that?

A. That was four years before uncle Lewis died.

81. Q. Where was he living, and where were you?

A. He was at the hall. I was at home.

82. Q. Do you know of any reason why your father should defraud you?

A. No, sir; except to provide for his sons; of course he would have to take from me to provide for them.

83. Q. Do you think you are any more worthy than your brothers and your sisters?

A. Yes, sir. Not more than my sisters; I was always willing to share everything with them; but I certainly think I deserve more than
244 my brothers, because they have always had more than pa's girls. They got everything that pa had, and now I think that after uncle Lewis' death I should enjoy it.

84. Q. Can you give us the date of the day you heard your uncle Lewis declare his intention to leave something to his brother Nathaniel's daughters?

A. The day that Miss Wright drew up that will or paper—I don't know what you would call it—he said so; that was the last time I heard him say it.

85. Q. Will you give the date of that declaration of intention, as near as you can?

A. It was in the March that he wrote his own will.

86. Q. Will you state the year?

A. 1872, the year he died, I think; I don't remember dates perfectly.

87. Q. Your father and your uncle Nathaniel were the only brothers of your uncle Lewis, were they not?

245 A. Yes, sir.

88. Q. He has, I presume, no sisters living now?

A. No, sir.

89. Q. Your uncle Lewis was a bachelor?

A. Yes, sir.

90. Q. The three brothers resided in this city for what length of time?

A. I don't know, sir. Pa lived in Baltimore occasionally, lived there for a year or so and then come back to Washington.

91. Q. How long have you known your uncle Lewis and your uncle Nathaniel to reside in this city?

A. I don't know, sir.

92. Q. Is there any other cause for estrangement between you and your family except this property?

A. None whatever, sir.

Adjournment subject to notice.

246 FEBRUARY 4TH, 1879.

Met at the office of John C. Poor, esq.

Present, counsel for plaintiff and defendant.

Cross-examination by Mr. JAMES continued:

Q. Please explain more fully what you learned from your sister Genevieve as to the advice of Mr. James concerning her giving it all up.

A. My sister Genevieve said that she went to Judge James and asked him to draw up for her, I don't think she said a deed, I think she said a paper that would let her give up the property and the rights she had in

it, and that he said no, he would draw up a paper that would do for the present. She told me that he said that she was neither for nor against, and that some person witnessed the paper and she signed it. She told me that at my house at Waverly, last summer.

Redirect examination by Mr. WEBB:

247 Q. Please state what was the difference in the condition of your uncle Lewis at the time when he spoke to Miss Wright concerning the last deed and when he executed it.

(Objected to as not being proper on redirect examination.)

A. Why, the difference was very great. When uncle Lewis executed the last deed, the day he executed it, he was very low and very weak, just as weak as a child. So weak that he could not remove the phlegm which accumulated in his own throat. My sister had to put a towel on her finger and clean his mouth out frequently. He was very weak and would have strangled if it had not been removed. He had had the hiccoughs for some days, I don't know exactly how long. He would lie perfectly still, just like a dead man, until you would rouse him up, except when he had hiccoughs.

248 Q. You say in your cross-examination that some effort was made to persuade your uncle Lewis to make some provision in his will for Mrs. Caulfield. Can you state more particularly what was said, and what was done in that respect?

A. The day Miss Wright drew that will for uncle Lewis he said I will not leave that Caulfield woman one cent, he was angry with her; Miss Wright, said Mr. Lewis, Mrs. Caulfield is your brother's oldest daughter; if you don't leave her something he can never forgive you. Uncle Lewis said, "Then give her the same as the rest, as Nat's daughters; give her the same as Nat's three daughters."

Q. Give her the same as Nat's three daughters?

A. Yes, sir; "Give her the same as Nat's three daughters."

Q. You have been asked whether you and your husband had any conversation about this matter of your uncle Lewis' estate before your marriage. Please state what passed between you and Mr. Howard concerning this property, before your marriage, as fully as you can recollect the same.

249 A. My brother Thornton and myself had been having some unpleasant words, and when Mr. Howard came in I was crying, and held out my hand to him. He asked me what was the matter. I told him that Thornton had hurt my feelings several times. I said if uncle Lewis had deeded all his property to Genevieve and myself, I did not see why I could not get mine and leave home when I was so unhappy, and I asked Mr. Howard to look at that deed for me. Did not say anything more about it that day. The next day when he came he told me that I was not worth five cents. I told him he did not know what he was talking about; I was sure I was worth half of uncle Lewis' estate. Mr. Howard said the deed on record gives all the property to Mr. Samuel Carusi. I said you have seen the wrong deed. I know uncle Lewis made a deed conveying all the property to us, for he said so. Look again and you will see the deed giving Genevieve and myself everything. Afterwards Mr. Howard

told me there was no such deed on record. I said I will ask Thorn-
250 ton where that deed is. We said no more about it after that.

Q. How old were you when your uncle Lewis made the declarations concerning his intentions with respect to the disposition of his property after his death, to which you have testified?

A. He made them all along. I have heard them ever since I can remember. Heard him tell them to me and to others in my presence up to the time he died, and then I was over twenty-one.

Q. Did you ever express any willingness on your part to share this property with your mother; and, if so, did you express such willingness to her and what did you say?

(Objected to as not re-examination.)

A. I told ma; ma spoke of this compromise, and I told her certainly I was willing to compromise, willing to share everything with her until her death; willing to let every cent that came to me pass through her
251 hands until her death; that at her death I wanted my half of uncle Lewis' estate.

Q. What compromise do you refer to?

A. Why, the one we spoke of last summer, last August, and the one we spoke of about ten days ago; I don't remember the exact time; when I went to Judge James; he may remember, but I don't.

Q. Has your mother or any other member of the family visited you since your father's death?

A. Yes, sir, my sister Genevieve *was*; I won't be positive, but I think ten days or two weeks last June; and mamma stayed from Thursday until Monday or Tuesday at my house in the last of August; I won't be positive about the date, but I think Monday was the 1st of September. Eugenia Carusi, my brother's child, has visited me. These are all since my father's death. My sister Mrs. Caulfield was at my house in Gilmore street.

Q. Have your brothers ever visited you?

252 A. Not since pa's death.

Q. Can you tell how many months you have resided in your father's house since your marriage, in June, 1875?

A. Yes, sir; I was there between fourteen and fifteen months. I can give you the dates if you want them.

Q. You were there about fourteen or fifteen months since '75, is that it?

A. Yes, sir; about fourteen months and a half, I should think. This was all before my father's death.

Q. What did your uncle Lewis say about a provision in his will for the daughters of your uncle Nat?

A. The day Miss Wright drew the will he told her that she must put in $5,000 for each of Nat's daughters, because he had promised Nat he would leave them something.

Q. Do you know what your father considered his age to be? Did he
253 ever tell you, or did you ever hear him say what his age was?

A. When he went to register, when he was going to vote in 1876, when we were living in Baltimore, he came home, and at the lunch table said he registered at 85, and ma said, "Mr. Carusi, you know you're not that old." He said, "Yes, I have registered on my oath that I am eighty-five."

Q. Do you know what was the difference in age between the three brothers, between your father and your uncles Nathaniel and Lewis?

A. Pa always told me that there was a year's difference between the three, a year between himself and uncle Nat., and a year between uncle Nat. and uncle Lewis.

ISOLINA E. HOWARD.

254 *Deposition of Miss Harriet L. Wright.*

Met pursuant to notice at the house of Miss Wright, corner of 18th and K streets NW., Washington, D. C. February 7th, 1879, at 6 o'cl'k p. m.

Present, counsel for plaintiff and counsel for defendants.

Miss HALLIE WRIGHT, a witness for the complainant, being first duly sworn, deposes and says as follows:

Examination-in-chief:

1. Q. What is your name?

A. Harriet L. Wright.

2. Q. You are generally called Hallie Wright?

A. Yes, sir.

3. Q. Do you know the parties to this suit, Mrs. Isolina E. Howard, Mrs. Adelaide S. Carusi, and the other sons and daughters of Mr. Samuel Carusi?

A. I do.

255 4. Q. Did you know Mr. Samuel Carusi during his life-time, and his brother, Mr. Lewis Carusi?

A. I did.

5. Q. How long before his death were you acquainted with Mr. Lewis Carusi?

A. For quite a number of years.

6. Q. Were you on intimate terms?

A. Yes, sir.

6. Q. (continued). With the family of Mr. Samuel Carusi, and if so, for how long before his death?

A. Seven or eight; longer than that I guess.

7. Q. Where did Mr. Lewis Carusi reside when you first made his acquaintance?

A. Down at his house, known as Carusi Hall, now the Theatre Comique.

8. Q. Did you see Mr. Lewis Carusi frequently?

256 A. Yes, sir; except for about two years before his death.

9. Q. During your acquaintance with him, did you ever hear him say anything about his property, and particularly what disposition he intended to make of it, at the time of his death? And, if so, please state what those declarations were.

(Objected to because incompetent and immaterial, and because it may not be used in proof of any of the issues in this suit.)

A. Yes, sir. I never heard him say but one thing, that he intended to leave his property to his brother Samuel Carusi during his life, and at his death it was to go to Isolina and Genevieve Carusi.

10. Q. Did you ever hear him give any reasons for making such a disposition of his property?

(Question objected to because incompetent and immaterial, and
257 because in that form it would not be used in proof of any of the issues in this case.)

A. He said that the boys did not need it; that they were strong and could work for themselves; that he did not want any of the others to have anything to do with his property, but the two girls after his brother's death.

11. Q. Did he at any time in your presence state any special reason why he desired that his property should be enjoyed by his brother Samuel during his life?

(Same objection as last above.)

A. No, sir; he stated no special reason.

12. Q. From what he said to you at different times can you tell how he regarded his nephews and nieces, comparatively, with respect to their claims upon him and his property?

(Question objected to, as incompetent and immaterial, and as asking for conclusions and not facts.)

258 A. No, sir; he never said anything, only what I said before, that his brother should have his property, and the two girls at his brother's death.

13. Q. Did he ever say anything about his nephews and how they were to be treated, with respect to his property after his death?

(Same objection as last above.)

A. No, sir; he only said he wished the two girls to have his property.

14. Q. Did you ever hear him speak at any time in connection with this matter of the disposition of his property, of Mrs. Adelaide Carusi, the widow of Samuel Carusi?

(Objected to as incompetent and immaterial.)

A. No, sir.

Cross-examination:

259 15. Q. Did you ever have any conversation with Lewis Carusi or hear him say anything about his property during the two years prior to his death?

A. No, sir. I saw him once, three months before he died, but he did not mention property. He spoke of his life. I was not in the room more than ten minutes.

16. Q. So that you never saw him, except upon this one occasion, within two years before his death?

A. No, sir.

17. Q. There were three daughters of Samuel Carusi, were there not?

A. Yes, sir.

18. Q. Did you ever hear anything unpleasant said by Lewis Carusi in regard to Mrs. Caulfield, one of the sisters?

A. No, sir.

19. Q. Where were you residing during the period two years prior to Mr. Lewis Carusi's death?

260 A. In various places. I was in Baltimore, living there part of the time; I lived on Capitol Hill; and I lived on F street.

20. Q. In this city?

A. Yes, sir. I resided in this city most of the time, except during three months, when I was in Baltimore.

21. Q. Then you resided in this city all the time, except three months in Baltimore?

A. Yes, sir.

Redirect examination:

22. Q. What did Mr. Lewis Carusi say about Mrs. Caulfield?

(Objected to because incompetent and immaterial.)

A. He said she had a husband, and therefore he should not support her.

Mr. WEBB. That is all.

HARRIET L. WRIGHT.

261 *Deposition of B. F. Wiget.*

WASHINGTON, *March* 4, 1879.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL.

Met pursuant to notice.

Present, co'nsel for complainant and defendants.

The Reverend Father B. F. WIGET, a witness for the complainant, being called, who, first being duly sworn, on his oath deposes and says as follows:

1. Q. What is your name?

A. B. F. Wiget.

2. Q. Are you acquainted with the parties to this suit, and if so, which of them?

A. I am acquainted with Isolina E. Howard, Mrs. Carusi, Genevieve Carusi, and slightly with Mrs. Caulfield. I also know Thornton Carusi, but do not know the rest.

3. Q. Did you know Lewis Carusi during his life-time?

262 A. I knew him well about a half a year before he died and up to the time of his death.

4. Q. During the period of your acquaintance with Lewis Carusi did you visit him, and if so in what capacity, and how frequently?

A. I did visit him as a minister of the Catholic Church frequently, & within the last two or three weeks of his death almost daily.

5. Q. Where did Mr. Lewis Carusi reside at this time?

A. On Capitol Hill, north of the Capitol, at the residence of Mr. Samuel Carusi and his family.

6. Q. During the last few weeks of the life of Mr. Lewis Carusi, do you remember what member of the family you met when you visited the house where he resided?

263 A. I used to meet Mrs. Isolina E. Howard, Mrs. Carusi, Genevieve Carusi, and sometimes Samuel Carusi. I think I met Thornton sometimes.

7. Q. Can you tell us from your observations at that time what were the relations between Mrs. Howard and Mr. Lewis Carusi, whether they were friendly or otherwise? In answering this question, please state whether these relations continued to be the same down to the time of Mr. Lewis Carusi's death, or otherwise, as the case may be.

A. From my observations during that time I could not judge but that the relations between Mrs. Howard and Mr. Lewis Carusi were friendly, and I did not observe anything from which I could judge that those relations were changed up to the death of Lewis Carusi.

8. Q. How long before his death had you known Mr. Lewis Carusi, and under what circumstances did you first become acquainted with him?

264 A. I knew him about a half a year before his death, and I got acquainted with him through Mrs. Isolina Howard, owing to the special interest she took in his spiritual welfare.

Cross-examined by Judge JAMES, counsel for defense:

9. Q. What was the object of your frequent visits during the last two or three weeks of Lewis Carusi's life?

A. My object was his spiritual consolation.

10. Q. Where did your interviews on such occasions take place?

A. As long as he was not confined to his bed in the parlour, or in any room he was in. He was confined to his bed about two or three weeks, I think, but cannot say positively the exact time.

11. Q. Were you in the habit of having other persons present at such interviews, especially after Mr. Lewis Carusi was confined to his bed?

265 A. Before he was confined to his bed there was always somebody present, and after he was confined to his bed I saw mostly alone, but not always; the priestly functions are such that when a confession is made to a priest those in the room go out.

12. Q. Can you state whether you saw Mrs. Howard at that house during the week preceeding two or three days the death of Mr. Lewis Carusi?

A. I saw her frequently; I am sure it was two or three weeks previous, and constantly down to his death.

B. F. WIGET.

266 *Deposition of John T. Vodery.*

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } Equity. No. .

Met pursuant to notice at the office of John C. Poor, esq., examiner, 416 5th street, Washington, D. C.

Present, counsel for plaintiff and counsel for defendant.

JOHN T. VODEREY, a witness for the plaintiff, being duly sworn, deposes and says as follows:

Examination-in-chief by Mr. WM. B. WEBB:

1. Q. Do you know the parties to this suit; and, if so, which of them? Mrs. Isolina E. Howard is the plaintiff; Mrs. Adelaide S. Carusi, Mrs.

Caulfield, Miss Genevieve Carusi, Mr. McLean Carusi, and Mr. Thornton and Mr. Pollando Carusi are the defendants.

A. I know all the parties to this suit.

267 2. Q. State whether you lived with Mr. Lewis Carusi at any time during his life; if so, when, and in what capacity, and what your duties were.

A. I lived with Mr. Carusi during a part of his life for about two months, and my duty was——

3. Q. How long before his death was it?

A. About two months before he died and up to the time of his death.

4. Q. In what capacity?

A. I just had to attend to him and give him whatever he asked for; to go errands if he wanted them done, and anything of that kind.

5. Q. Then you lived with him as a servant?

A. Yes, sir.

6. Q. Where did you sleep during that time?

A. I slept in his room—right on the floor.

268 7. Q. Where was your bedding kept during the day?

A. It was in a closet in the room.

8. Q. State what else was kept in the closet.

A. There was some shells and things that Mrs. Carusi had in there; some earthen-ware that was out of use, that they did not use.

9. Q. State, if you please, what part of this room was occupied by the bed of Mr. Lewis Carusi; where did that bed set?

A. It set in the back part of the room.

10. Q. In the back part of the room?

A. Yes, sir.

11. Q. How did it set with reference to this closet?

A. Opposite to the closet.

12. Q. Opposite to the closet?

A. Yes, sir.

269 13. Q. On the same side of the room or on a different side of the room?

A. Yes, sir; on the opposite side of the room.

14. Q. Was there more than one closet in the room?

A. No, sir; but one closet.

15. Q. Who occupied this house in which Mr. Lewis Carusi lived at the time you stayed with him?

A. Mrs. Adelaide Carusi and Samuel Carusi and the members of the family, with the exception of Mrs. Caulfield and Mr. McLean; they were not there.

16. Q. Did any of the family of Mr. Samuel Carusi, and if so which of them, attend upon Mr. Lewis Carusi while you were in the house?

A. Mrs. Carusi did, and all of them; they used to come into the room, but Mrs. Carusi, mostly, used to give general attention to him; she was in the room often; they all came in with the exception of Mr. Mc-

270 Lean. He was the only one I never seen in that room.

17. Q. Did you see Mrs. Howard frequently in the room?

A. Yes, sir.

18. Q. Did Mr. McLean Carusi frequently visit his father's house during Mr. Lewis Carusi's last illness?

A. No frequenter than usual; he always came once or twice a week then to the house; he used to come every week.

19. Q. When Mr. McLean Carusi came to the house did he come into Mr. Lewis Carusi's room while you were there?

A. No, sir; I never seen him there.

20. Q. As far as you observed at the time that you were at the house attending upon Mr. Lewis Carusi, what were the relations between him and Mrs. Howard? Were they friendly or otherwise?

271 A. They were friendly.

21. Q. Did they continue so down to the time of his death, or was there any change at any time in them while you were there?

A. No, sir; not while I was there.

Cross-examination by Mr. HINE:

22. Q. During the whole of these two months that you lived with Mr. Lewis Carusi you slept in the same room with him?

A. Yes, sir.

23. Q. Who else slept in the room with him?

A. No person else, sir.

24. Q. Your principal duty was to attend upon him?

A. Yes, sir.

25. Q. He was not confined to his bed during the whole of these two months, was he?

A. No, sir.

272 26. Q. Did anybody else attend upon him, wait upon him, except yourself and the members of his family?

A. No, sir.

27. Q. Who paid you your wages?

A. Mrs. Adelaide Carusi paid me.

28. Q. How long before his death was the last time that Mr. Lewis Carusi was able to leave his room?

A. It was more than a month that he was confined to his bed. The first month of his confinement he went away from the house for about a week; he came back again and stayed there until he died. He used to get up some fair days and walk around the yard, but he didn't stay up long then.

29. Q. Did you have any day off in the week while you were waiting upon Mr. Lewis Carusi?

273 A. No, sir; any more than I went home to make a change in my garments, or something of that kind; then I had to come back very soon again.

30. Q. Who were living in the house? Mention the names of the people who were living in the house during the two months that you were with Mr. Lewis Carusi.

A. Mrs. Adelaide Carusi, Miss Genevieve, Mr. Samuel Carusi, Mrs. Howard that is now, and Mr. Thornton.

31. Q. Anybody else?

A. No person else; these was the members of the family that stayed there.

32. Q. I ask you: Was any one else living in the house during the time you were there, besides those you have mentioned?

A. There was a lady there by the name of Miss Nannie Wright, but she went away before the death of Mr. Carusi.

33. Q. How long before his death?

274 A. I don't know. I think it was not very long before; it was during the last month of his sickness. She went away just before he died.

34. Q. Was it three weeks before he died that she left?

A. Yes, sir.

35. Q. Was it more or less than three weeks before he died when she left?

A. It was about three weeks; it may have been more or less, but it was about three weeks.

36. Q. Was it more than two weeks before he died when she left?

A. No more than two weeks, I don't suppose.

37. Q. Was it more than ten days before his death that she left?

A. It was over two weeks. It was more than ten days. It was more than two weeks, I think.

275 38. Q. You never saw her from the time she left until Mr. Carusi's death, did you?

A. No, sir.

39. Q. You were there all the time, night and day?

A. I was there night and day, sir.

40. Q. And *how* went away to change your clothes?

A. Yes, sir.

41. Q. Which was not often?

A. No, sir.

42. Q. Did you say that there was nobody else living in the house, except those whose names you have already mentioned?

A. No, sir.

43. Q. Was any one else living in the house?

A. This lady I speak of, Miss Nannie Wright, and that is all. Them's all.

276 44. Q. Where do you live now?

A. I live on E street, number 505, between 5th and 6th.

45. Q. With whom?

A. I have got a room there in the basement.

46. Q. Who lives in the rest of the house?

A. I don't know the lady's name; her name is Mary something; she rents the house, and she rents the basement out.

47. Q. You don't know who lives in the house besides yourself?

A. No, sir; I don't know those people upstairs?

48. Q. How long have you been living there?

A. It is going on two months now.

49. Q. Do you know Mr. Howard, this gentleman here?

A. I know him when I see him, sir.

277 50. Q. Have you talked with him about this case?

A. No, sir; I did not talk to him about it, sir.

51. Q. Did you talk with his wife?

A. No, sir; I have not talked with her anything about it.

52. Q. Who have you talked to about it?

A. Who have I talked to? I haven't talked to anybody about it, sir; I don't know anything about it.

53. Q. Who has talked to you about it?

A. Mrs. Howard. She was looking for me; at least she sent some person out to inquire for me. She supposed that I was out of the city; and I have not been in the city long. This old woman found me, and said she wanted to see me. So I went up to see her. She said that this suit was on hand and she wanted me there to say what I knowed about it.

278 54. Q. Did you tell her you did not know anything about it?

A. I told her I could not say any more than I knowed.

55. Q. Did you tell her what it was that you did know?

A. Yes, sir; I told her what I could recollect of it.

56. Q. She told you the particular point she wanted to get your evidence on, didn't she?

A. Yes, sir.

57. Q. She said she never had had any misunderstanding with her uncle, Mr. Lewis Carusi, didn't she?

A. No, sir; she never said that to me.

58. Q. What did she talk to you about?

A. She asked me if I ever heard of it. I told her I had not.

279 59. Q. What was the point she told you she wanted your evidence on?

A. She only wanted me to give a description of the room. That was all.

60. Q. Let us come to that room. You say the closet was right opposite the bed?

A. Yes, sir.

61. Q. You are sure of that?

A. Yes, sir

62. Q. On which side of the room was the bed—north, south, east, or west?

A. The bed was on that side; the closet was on that.

63. Q. Then the bed was on the west side of the room?

Mr. WEBB. I object to that statement; the witness has not said anything of the kind.

Mr. HINE. The witness pointed in the direction of the Presi-

280 dent's House, and counsel supposed that was indicative of the west.

64. Q. Which side of the room was the bed on—the east side or the west side, the north side or the south side?

A. The bed was on the west side of the room, north and south, and the closet was on the east.

65. Q. Do you remember the door that opened into his room as you approached it from the hall?

A. Yes, sir.

66. Q. Was that closet on the same side of the room as that door?

A. Yes, sir.

67. Q. Do you remember Mr. Lewis Carusi's executing any paper while you were there?

(Objected to as not at all proper on cross-examination.)

281 A. No, sir.

68. Q. Well, he didn't execute any paper during the two months you were there, did he?

(Objected to for the same reason and as improper in form.)

A. I don't know of any.

69. Q. You left after his death, did you, or the day he died?

A. I left after his death, sir, but not the day he died.

70. Q. Did he die in the morning or in the evening?

A. He died in the morning.

71. Q. Had you had any acquaintance with Mr. Lewis Carusi before you went to live with him on the hill?

A. No, sir.

Mr. HINE. That's all.

JOHN T. VODERY.

282 JAMES NICHOLAS CALLAN, a witness for the complainant, being duly sworn, deposes and says as follows:

Examination-in-chief by Mr. WM. B. WEBB:

1. Q. Please state your name, residence, and occupation.

A. My name is James Nicholas Callan; I reside at No. 610 Louisiana avenue; and I am a claim agent.

2. Q. Mr. Callan, do you recollect having an interview with Mr. McLean Carusi in this city some time in the fall of 1878?

Yes, sir. I saw Mr. Carusi three or four times in the fall.

3. Q. Do you remember an interview you had with him during the period when your brother Chas. C. Callan was here in the city for the purpose of testifying in this case? If you do, please state what occurred at that interview, where the interview took place, and what occurred.

283 A. Some time in the latter part of the month. I was standing——

4. Q. Of what month?

A. I think it was October; I am under that impression at least. I was standing on Louisiana avenue looking at the alteration of the bank building, when my brother Charles came along with a Mr. Middleton. I was introduced to Mr. Middleton and we all walked together up the avenue as far as 610; he told me he had just arrived that day——

Mr. WEBB. Never mind relating what conversation you had with your brother.

A. I only mention it as showing that it was the first time I had seen him. Some time during the same day—may be not more than an hour after—Mr. McLean Carusi came along; I told him that my brother Charlie was in town, and Mr. Carusi said he would like to see him, and that he would be at the Theatre Comique that night if Charlie would

284 come down there. Next morning Mr. Carusi told me that he had not seen Charlie, but he would like to see him, as he had a letter from his brother that he wanted to show him—from his brother Thornton—and that the letter related to the matter of this trial and that he would like to know where he could see my brother.

I told him if he would inquire at 1202 Pennsylvania avenue, south side, at Mr. C. B. Harrington's shoe store, he would probably get some information in regard to his whereabouts at that place. I don't know as I can say what my brother said after that.

Mr. WEBB. Never mind what your brother said.

The WITNESS. Then I suppose that is as far as——

5. Q. Had you any particular reason for telling Mr. McLean Carusi that your brother was in town?

(Objected to as incompetent and immaterial.)

285 A. I had learned from Mr. Thornton Carusi that he d sired to see my brother Charlie with regard to the execution of the papers that are in controversy in this case. I had learned from my mother that Mrs. Howard was anxious to see him.

7. Q. Did Mr. McLean Carusi at the interview you had with him show you the letter he had from his brother Thornton, or tell you what the contents of that letter were. If so, please state what he said.

A. I don't think Mr. McLean Carusi showed me the letter, and I think he only said that there was a difference in the statements of my brother and his brother with regard to the disposition of those papers at the time of their execution; that my brother contended that they were taken in one way and that Thornton Carusi thought that they were put into a box. That is my impression.

Cross-examination by Mr. HINE:

8. Q. Did you tell Mr. McLean Carusi at that interview that your brother had no memory?

286 A. At that interview?

9. Q. Yes, sir.

A. No, sir.

10. Q. At what interview did you so tell him?

(Objected to as witness has not said he told him so at any time).

A. After my brother had left the city Mr. Carusi repeated to me, that is as I recollect, some of the testimony that my brother had given in this case and I said to Mr. Carusi then that his memory was very bad. That his memory was very bad on that point if he had given such testimony as that.

11. Q. Whose memory did you refer to?

A. My brother's memory.

12. Q. Is his memory or recollection of facts very bad?

A. Well, I know he has had a great deal of domestic trouble and

287 it has to a certain extent impaired his recollection. I have known him at certain times to be in not exactly as good memory as he is at others.

13. Q. Why did you make use of the expression to Mr. McLean Carusi, "if he testified to that his memory must be very bad?"

A. Because Mr. Carusi told me that he had testified to something that I knew was not so.

14. Q. What was it?

A. It was in regard to his having been in the service of the United States up to 1865; and he never was in his life.

15. Q. Has not his memory within the last five or six years become very much impaired; that is, for the retention of facts?

A. I think his memory, sir, for the last four years, it will be—let me see—he left here March 18th, four years ago next Tuesday; at that time his memory was in very bad condition.

16. Q. In very bad condition?

288 A. Yes, sir; when he left here in 1875.

17. Q. Have you seen very much of him since?

A. I have seen him but seldom; in the last four years, may be five times.

18. Q. Has his memory or his ability to retain and detail facts improved any in that time to your knowledge?

A. Well, there are circumstances that sometimes throw him off his guard, but if he is not under excitement and has nothing before him that will excite him, he is very apt to be correct in what he says.

19. Q. Was not his memory five years ago so defective and so impaired as to become a matter of observation among his friends?

A. Five years ago? That would be 1874.

20. Q. Four or five years ago?

A. Well, his mental condition four years ago was rather bad.

289 He was staying with me at my house, and I noticed that he was not himself at that time; that was in March, '74. I saw him about sixty days after and he was better; he had improved a good deal.

21. Q. Did he not imagine many things to have an existence which in fact had no existence?

A. That I can't say.

22. Q. Is it not a fact that four years ago, or more, his memory was in such a condition that it was a matter of observation among his friends that it was greatly impaired and unreliable?

A. Four years ago, or more, his friends were a little anxious about him in consequence of his domestic troubles; he was then in very bad mental condition previous to March, 1874. Since that time I have noticed, and his friends have, an improvement in his condition.

Redirect examination:

23. Q. Do you wish to be understood as saying that your brother

290 never was in the service of the United States?

A. He never was, sir.

24. Q. He never was in the service of the United States?

A. I will say he had been clerk in the Coast Survey Office.

25. Q. When was that?

A. Previous to the war.

26. Q. In what year?

A. He went in there about 1858, and was there about four years.

Mr. WEBB. That's all.

JAMES NICH'S CALLAN.

291 *Deposition of Edward Austin.*

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } Equity. No. .

Met pursuant to adjournment at the office of John C. Poor, esq., examiner, No. 416 5th st., Washington, D. C., March 17, '79.

Present, counsel for plaintiff and counsel for defendant.

EDWARD AUSTIN, a witness for complainant, being duly sworn, deposes and says as follows:

Examination-in-chief by WILLIAM B. WEBB, Esq.:

1. Q. Please state your name, residence, and occupation.

A. My name is Edward Austin; residence, 912 Pennsylvania avenue; and my occupation is cabinet-maker.

2. Q. Were you acquainted with Mr. Lewis Carusi during his lifetime?

292 A. Yes, sir; but not during his life. I suppose I could recollect about twelve years, I reckon.

3. Q. Do you mean to say that you knew him for twelve years before he died?

A. Twelve years, not before he died, but up to now.

4. Q. That is, you would have known him twelve years up to now if he had lived so long?

A. Yes, sir; if he had lived till now. I mean to say that my acquaintance with him commenced twelve years ago.

5. Q. Were you ever in his employ?

A. Yes, sir.

6. Q. How long before he died?

A. I think I was in his employ before he died about—well, I left him about a year and a half before he died. I was in his employ about two years.

7. Q. What were your duties at that time?

293 A. My duties were to wait on him, to do anything he wanted done around the hall; to clean up, and everything of that kind.

8. Q. State if you know who collected Mr. Lewis Carusi's rents at that time.

A. Mr. Samuel Carusi.

9. Q. Do you know Mr. McLean Carusi?

A. Yes, sir.

10. Q. During the time that you were with Mr. Lewis Carusi did Mr. McLean Carusi visit him frequently?

A. He was around there a good deal; I don't know whether he came to visit him or his father.

11. Q. Did Mr. McLean Carusi collect rents or do any other business for Mr. Lewis Carusi to your knowledge?

A. Not as I know of, sir.

12. Q. Did you remain with Mr. Lewis Carusi over night?

294 A. Yes, sir.

13. Q. Anybody sleep there except you and Mr. Lewis Carusi?

A. Nobody except me, sir.

14. Q. Nobody except you?

A. Nobody except me, sir.

15. Q. Mr. McLean Carusi ever sleep there to your knowledge?

A. Not as I know of, sir.

16. Q. Who did Mr. McLean Carusi come to the house to see when he called there?

A. When he came there—he always asked for his father when he came there.

17. Q. As far as you could observe, what were the relations between Mr. Lewis Carusi and Mr. McLean Carusi; were they friendly or otherwise?

295 (Question objected to as leading and asking a conclusion from facts instead of facts.)

A. I don't think they were very friendly, to my knowledge.

Cross-examination by Mr. HINE:

18. Q. Ned, who was talking to you about this case?

A. Nobody was talking to me about it; that gentleman there (indicating Mr. Howard) came down to the store and asked me if I could get off. He is the only gentleman I have seen. He came down there and asked me if I could get off.

19. Q. What gentleman; Mr. Howard there?

A. Yes, sir.

20. Q. He didn't ask you anything about Mr. McLean Carusi's sleeping there?

A. Mr. Howard?

21. Q. Yes; he didn't ask you whether Mr. McLean Carusi ever slept there?

296 A. He asked me if Mr. McLean Carusi ever stayed there at night. He said he said he stayed there.

22. Q. You were not employed by Mr. Lewis Carusi after he left the saloon and went up on Capitol Hill to his brother Sam's to live?

A. No, sir; I was not. I left him about—as far as I can recollect—I think it was about nine months before he left the saloon, as far as I can recollect.

23. Q. You left him about nine months before he left the saloon to go on Capitol Hill?

A. Yes, sir; about nine months' as far as I can recollect.

24. Q. And you don't know whether Mr. McLean Carusi slept there? after you left or not, do you, Ned?

A. Not as I know of, sir.

25. Q. And you were not about there a great deal after you left, not at the saloon?

297 A. No, sir; I don't think I was ever about there. I never was in the saloon after I left there but once after I left.

26. Q. Well, you were with Mr. Lewis Carusi off and on during the time you were there?

A. Yes, sir.

27. Q. And there was one time when you left for some time and then went back again?

A. I left about a week and went back.

28. Q. That was not the only time you left, Ned?

A. Yes, sir; that was the only time I left during the whole time I was with him.

29. Q. Only one week. Now, how long were you with him, as near as you can recollect?

A. As near as I can get at it, it was about two years, as near as I can remember.

30. Q. Didn't you leave there on account of something about the wages that he was to pay you?

298 A. Yes, sir; I left there on that account.

31. Q. And he came after you again?

A. He sent after me; yes, sir.

32. Q. And you went back?

33. Q. Who stayed with him during the week you were away, Ned? You don't know, do you?

A. I don't know; but I think it was a colored man who was staying around there, named Pete.

34. Q. He had been a slave, hadn't he?

A. Yes, he had been a slave.

35. Q. Pete, however, did not sleep in the room with him?

A. No, sir; not that I know of.

36. Q. Pete simply stayed around there for some place to stay; didn't he, Ned?

A. Yes, sir; that is all.

37. Q. He didn't wait upon him?

299 A. No, sir; he did not wait upon him.

38. Q. You say he was not very friendly, you think, towards Mr. McLean Carusi; well, at times he wasn't very friendly towards anybody; was that so?

(Objected to.)

A. He used to seem to be very friendly towards his brother Sam; he used to seem to be very friendly to him all the time.

39. Q. But except him he was very changeable to everybody else?

A. Yes, sir; to everybody else.

40. Q. One day he would think a good deal of them, and the next day he would think very little of them, always excepting his brother Sam; is that it, Ned?

(Objected to, because it is more proper for the witness to testify than for counsel.)

A. I don't know anything about that. He used to have some

300 very curious ways sometimes, but I don't know what he thought, or anything like that, of course. I could not say what thoughts he had in his own mind; I don't know what his thoughts were.

41. Q. What do you mean by the expression "curious ways?"

A. I mean the way he used to act sometimes; but I never asked him who he was friendly with or who he was not.

42. Q. He would pitch into everybody sometimes; he would pitch into you sometimes, wouldn't he, Ned?

(Objected to as testimony of counsel instead of testimony of witness.)

A. Yes, sir; he would.

43. Q. Now, you say he did not seem to be very friendly towards Mr. McLean Carusi; well, he didn't seem at times to be very friendly to any of his brother's (Sam's) family, did he?

(Same objection made as last above.)

301 A. I don't know whether he did or did not; he seemed to be very fond of his daughters.

44. Q. Which daughters were they?

A. Well, the two youngest ones.

45. Q. When did he exhibit a fondness for them?

A. I don't know when he exhibited it, but he always used to talk a great deal of them, and all that way.

46. Q. When did you hear him say, and what did you hear him say, and where did you hear say anything about them?

A. Well, I used to be in the room there talking with him; Mr. Samuel used to be there, too; they used to come down there to see him sometimes; and everything like that.

47. Q. Who came down to see him?
A. Mr. Samuel Carusi's daughters.
48. Q. How often have you ever seen them there, Ned?
A. I can't say exactly how often I have seen them there.
302 49. Q. Did you ever see them there twice?
A. Yes, sir; I have them there twice and more than that, too.
50. Q. How often during the two years you were there did you ever see them there?
A. I seen them there as far as I can remember about half a dozen times.
51. Q. Who did they come to see—their father or their uncle?
A. When they came there they used to ask, was Mr. Lewis Carusi in.
52. Q. Did they used to come together—these two?
A. Sometimes they came together, but they used to come sometimes one by herself.
53. Q. What was the name of the one that used to come there by herself?
A. Well, I can't recollect exactly either one of their names.
54. Q. What did they come there for?
303 A. Well, I suppose they came to see Mr. Lewis Carusi; I never asked them what their business was.
55. Q. You would be present in the room while they were there?
A. No, sir; I would not be present then, of course; it was not my place to be in there while they were talking.
56. Q. How long before he left the saloon was the last time that you saw his two nieces there?
A. Well, I could not tell you exactly the date.
57. Q. Was it six or eight months?
A. I think it was longer than that.
58. Q. About ten or twelve months?
A. No; I don't think it was as long as twelve months; I think it was about nine months, as near as I can recollect. He was always very fond of his brother Sam, more fond than he was of anybody else.
304 59. Q. I want you to consider and think whether you ever saw Mr. McLean Carusi collecting rents for the balls that were given there?
A. Not as I knows of, sir; not while I was there.
60. Q. He might have done it without your knowledge, Ned?
A. Yes; he might have done it without my knowledge, but he didn't while I was there.
61. Q. Don't you remember his collecting rent for a ball given by the Schuetzen Verein there?
A. Rent for a ball given by the Schuetzen Verein?
61. Q. (Continued.) Yes.
A. Not as I knows of; as far as I can recollect, I don't think I ever seen him receive any rent from any balls that were ever given down there.
62. Q. You wouldn't be likely to see him when he collected it, would you, Ned?
A. No; I don't think I would, sir.

305 63. Q. You never saw anybody collect any rent there but his brother Sam?

A. No, sir; I never saw anybody collect any rent there but his brother Sam. His brother Sam used to go out and collect.

64. Q. You never saw him give his nephew, Mr. Eugene Carusi, any bills to collect, did you?

A. No, sir.

65. Q. Do you remember the time when Doctor Morgan and Doctor Miller held a consultation there about Mr. Lewis Carusi?

(Objected to as not proper on cross-examination.)

A. I don't remember about any consultation being held there; those and other doctors were there; of course I never asked them what their business was.

66. Q. Do you remember the time when Dr. Morgan and Dr. Miller called there together?

(Same objection as last above.)

306 A. Well, they did not used to be the only ones that came together, Dr. Morgan and Dr. Miller; there used to be two or three doctors call there together.

67. Q. Do you remember the time when Dr. Morgan and Dr. Miller called there together to see him professionally, as physicians?

(Same objection as last above.)

A. I know that they called there, but I don't know that they held a consultation.

68. Q. Was Mr. McLean Carusi there at that time?

A. Not as I knows of, sir; not to my recollection.

69. Q. Who helped you change Mr. Lewis Carusi—change his clothes and give him a bath?

A. Who helped me change him and give him a bath? I don't know; I think I done it while I was there.

70. Q. The question is who helped you to do it?

A. Nobody as I knows of.

307 71. Q. How long have you been in the cabinet-making business, Ned?

A. I have been there about four years.

72. Q. Before you went into the cabinet-making business where were you; what were you doing?

A. Driving one of Knox's express wagons.

73. Q. Why did you leave Mr. Knox's employment; did you have any trouble with him?

A. No, sir; the reason I left Knox's employment was because I thought I could do better—could get more wages.

74. Q. Knox didn't discharge you?

A. No, sir.

75. Q. Where did Mr. Howard come to see you about this case?

A. He came to my place where I worked at.

76. Q. When?

308 A. Let me see; I don't remember exactly the first time he came down there. He was down there Saturday; I promised to come up if I could get off, but I was so busy I could not get off. He was down there this morning, and asked me if I could get off; I told him I didn't

know; that when I went to dinner I could tell when I got back from dinner if I had time.

77. Q. When was the first time he came to see you?

A. I don't know exactly the first time; I think the first time was—though I never put it down—as far as I can recollect I think it was about two weeks ago.

78. Q. How many times has he been to see you in all, Ned?

A. I think he has been to see me in all—you mean how many times have I seen him?

78. Q. (continued.) Yes.

A. Well, about three times.

309 79. Q. What did he say to you when he came to see you the first time?

A. The first time he came to see me he asked me did I ever live with Mr. Lewis Carusi? I told him yes.

80. Q. He talked about the case with you the first time he came?

A. He asked me had I ever lived with Mr. Carusi; he asked me who transacted Mr. Carusi's business. I did not know Mr. Howard then, but I told him that Mr. Samuel Carusi used to transact all of his business I knew anything of.

81. Q. Who else used to be about there a good deal while you were with Mr. Lewis Carusi?

A. There used to be a good many around there.

82. Q. Dr. Duhamel used to come down there a good deal?

A. Yes; Dr. Duhamel used to come down there.

83. Q. Yes, and a man in the first ward; what is his name, now—

310 he used to live on Pennsylvania avenue in the first ward. He used to be there a good deal?

A. Yes; I don't know his name, but he used to be a clerk in the War Department. He used to live in the first ward, and then he went to live at the navy-yard.

84. Q. He used to be there a good deal?

A. Yes, sir.

85. Q. Anybody else?

A. Well, there used to be some others come down there.

Mr. HINE. That's all.

EDWARD AUSTIN.

311 Mrs. ISOLINA E. HOWARD, a witness for the complainant, being recalled, deposes and says as follows:

Examination-in-chief by WM. B. WEBB, Esq.:

Mr. HINE. I object to this testimony as to any matters about she might have been examined in her previous deposition.

1. Q. Are you acquainted with Mr. Charles C. Callan; if so, how long have you known him?

A. I have known him by sight for some time. For years before uncle Lewis's death I knew him by sight.

2. Q. Did you ever see him at your father's house on Capitol Hill?

A. Yes, sir; once.

3. Q. Please state, as far as you remember, what took place on that occasion.

312 A. Well, Mr. Webb, it was in July, 1872. I knew that Mr. Callan was in the house; heard it mentioned by several persons that day. I heard them all down-stairs talking, Mr. Callan, pa, uncle Lewis, and Thornton, and several times I went to the head of the stairs—I had been sick and could not go down-stairs yet—and looked down over the banister. I wanted to see Mr. Callan. The last time I went to the head of the stairs and looked down I met pa coming up from the parlor, or at least from the direction of the parlor, with some papers, an inkstand, and a pen in his hands. I went in my room again and looked out of the window and saw Mr. Callan and Thornton leave the house and go down North A street. Pa went to his own room and closed the door; his room was in the back building.

Mr. HINE. So much of the foregoing answer as relates to hearsay is objected to on that account.

The WITNESS (continuing). I knew Mr. Callan personally; knew
313 when he left the house; or, at least, if not personally, by sight. I knew his sisters well and knew it was Mr. Callan when he left the house.

4. Q. Do you remember a blue box belonging to your uncle Lewis Carusi; and, if so, please state where he kept it, for what purpose it was used, who had access to it, and generally describe the box?

A. Yes, sir; I remember it perfectly. It was a blue box; I can't say exactly how large it was, but I think it was about two feet square. It set in different places in the room. Once it set in the recess at the foot of his bed. His bed did not go down entirely to the recess. At times it set under his bed. It set in different places in the room. It was used for uncle Lewis' papers, and I have seen pa go there to it very often. I have stood by and seen him when he would open the box and take papers from it. Often I have seen him go to that box.

5. Q. Did this box at any time set in the closet in your uncle Lewis' room?

314 A. No, sir; it did not. The closet was entirely too shallow to hold the box. I have tried myself a number of times to put that box in the closet. I could not get it in the closet so that the door could be closed.

6. Q. Was the box heavy to lift?

A. Well, sir, it was moderately heavy.

7. Q. Did the box contain anything that would increase its weight?

A. Yes, sir; it contained a small iron box, a black box which Thornton got after uncle Lewis' death. It was an iron box, and, as I remember it, it looked as though it was studded; it was studded with large nails; it was fastened with a padlock. That box was heavy and it was in this wooden blue box.

8. Q. During the summer of 1872 did you hear your uncle Lewis at any time say who had the management of his business?

(Objected to as manifestly leading.)

315 A. Yes, sir; I heard him say dozens of times that pa had the management of his business and that no one else should ever have it until after his death; that after my father's death we could have who we pleased to manage it.

9. Q. Have you ever seen your brother, Thornton Carusi, write?

A. Yes, sir.

10. Q. Please look at the letters now shown you and say in whose handwriting they are?

A. In my brother Thornton's handwriting, of course.

(The letters referred to are offered in evidence by counsel for complainant.

Their introduction is objected to by counsel for defendant for irrelevancy.

They are marked "Exhibit 4.")

11. Q. Did you ever see your uncle Lewis write?

316 A. Yes, sir; I have seen him write often after he came to our house on Capitol Hill *Hill*. He used to write over newspapers and other papers as he sat around the house simply for amusement.

12. Q. How long before his death did you see him write the last time?

A. I can't say exactly, sir; I have an old newspaper among my things somewhere where he has written all over the margin of it. I have kept it since his death. I don't know exactly where it is now, though.

13. Q. State whether you know anything of a will made by your uncle, Lewis Carusi, in 1869.

(Objected to as not in rebuttal.)

A. No, sir; I don't know anything about it. I have heard my sister, Mrs. Caulfield, speak of it repeatedly, but I never heard any one else mention it.

14. Q. State whether you ever said to Mrs. Caulfield that you intended to set up such a will.

317 A. No, sir; I never said anything of the kind. I said to Mrs. Caulfield—she asked me was I willing to set up the will of 1869, if so she was with me. That was I don't know exactly how long after pa's death, but not very long. I told Mrs. Caulfield that I knew nothing of the will of 1869, and that I did not have anything to say about it, but if I got the money that uncle Lewis had left me, that I was willing to share with her and that I thought Genevieve would do the same, and then she would have the same as us. That is what I told her. I told her that several times.

(The answer of witness is objected to so far as it is not in response to the question, and the conversation she detailed is objected to as immaterial.)

15. Q. State how you obtained possession of the letter of Mrs. Caulfield put in evidence in this case.

318 A. My sister Genevieve sent it to me with a little note from herself, which I cannot find, in which she said that sister wanted me to read that letter. I read it and tossed it in my desk; not long ago I was looking over some papers and I found it.

16. Q. What were your social relations with your uncle Lewis during the last year of his life and up to the time of his death? Were they friendly or otherwise?

(Question objected to because it is not in the line of rebutting testimony.)

A. Always friendly. He was kind to me up to the hour of his death. There was never anything unpleasant between us at all.

17. Q. Was there any change in your relations at any time?

(Same objection as last above.)

A. No, sir; none whatever.

18. Q. During the time that your uncle Lewis lived at your father's house did your brother McLean Carusi visit him frequently
319 or otherwise?

A. No, sir; he did not visit him frequently; I do not remember to have ever seen him in my uncle Lewis's room on Capitol Hill.

19. Q. Do you know anything about your brother McLean Carusi's occupying of your uncle Lewis's house at any time?

(Objected to because not rebutting evidence and because it is leading.)

A. Yes, sir; I know that he told me that pa had put McLean in one of his houses without his permission, and that he was very angry about it and said he had determined to get him out of there.

20. Q. What have been Mrs. Caulfield's social relations with your father's family during the last ten years?

A. Well, sir, we have always been polite to each other, but nothing more. Well, I don't know exactly how long, but at one time she did not visit the house at all for a long time. That was after she
320 commenced this suit against pa. She did not visit the house for some time, and when she did visit it she just came in and sat and hour or so and then would go off again, almost as a stranger would have done. If anything particular went on in the family ma would always say don't say anything of this to your sister—I don't wish her to know anything about it.

Cross-examination by Mr. HINE:

21. Q. I understand you to state in your direct examination that you remember Mr. Charles C. Callan calling at your father's house in the month of July, 1872?

A. Yes, sir.

22. Q. You state that you wanted to see Mr. Callan on that day?

A. Yes; I simply wanted to look at him. Because I knew he was in the house and I wanted to look at him. I had seen him often with
321 his sister Laura and knew him by sight, but I had never seen him close. And I just wanted to get a good look at him; that was my motive.

23. Q. Was that your motive when you leaned over the banisters and heard the conversation in the room below?

A. I did not hear their conversation. As I told you before, I had no motive in looking over the banisters but to see Mr. Callan. The parlor door was just at the foot of the stairs—that is, the back parlor door. I could have seen him as he came out. I had been sick and had not been down-stairs then; consequently I could not go any further than the hall.

24. Q. What was your motive then in looking out of the window to watch him depart with your brother Thornton?

A. Because I wanted to see him; I wanted to get a good look at him.

25. Q. Your motive then in all of this action was simply one of curiosity?

322 A. Simply to see a man of whom I had often heard his sister speak, and often seen with his sister Laura, but I had never seen close, and I wanted to see him.

26. Q. How did you know that he was about there that day?

A. Well, I had heard it spoken of through the house, though I had not paid any attention to it.

27. Q. Who told you he was down-stairs?

A. Ma said he was down-stairs. Ma was in her room; she had the back-room and I had the front; she was sitting about there all the time, because I had been sick, to keep me company.

28. Q. You say the blue box was put in different places at different times in the room. Whose room do you allude to?

A. Uncle Lewis' room.

29. Q. You describe the size of the box, where it was placed
323 from time to time, the fact that it would not go in the closet and that it was tolerably heavy, and speak of the contents of it?

A. Yes, sir.

30. Q. How did it happen that your attention was directed so particularly to that box?

A. Because Mr. Webb spoke of it to me as being mentioned in Thornton's answer.

31. Q. I am speaking of your familiarity with the size, the location, and the contents of this box at the time you allude to prior to your uncle's death?

A. Why did I notice it at that time do you mean?

31. Q. (Continued.) Yes.

A. Why because I knew it was uncle Lewis' box of treasures, as we used to call it; he always took that wherever he went. When he came up to the house, no matter if he didn't stay any length of time, he
324 would bring his old blue box with him. When he went back to the saloon again he took his old blue box with him; wherever he went his old box went with him. That made me feel interested in it. Everybody would joke him about his old treasure-box; if he was in the house we were always trying to hide it when we went to fix his room, because it was in the way and a perfect nuisance setting around the room.

32. Q. How did you happen to be standing alongside of your father when he went there to take papers from it?

A. Because I was in uncle Lewis' room several times when pa opened it to get papers. At one time when he wanted it I took the box from out of the corner and placed it on the little black sofa that stood in his room. I stayed there till he got out some papers from a bundle that I remember was tied with a piece of white ribbon that was yellow with age. He put it back in the box, and I stood it in the corner again for him
325 because I did not wish him to lift it himself.

33. Q. Did you keep your eye on that box so as to notice its change of position?

A. Not particularly; but, as you must know, I was the general housekeeper in that house; always kept house and attended to everything for ma. Whenever I would have Arthur clean uncle Lewis' room, and I would be fixing it afterwards, I would try to put that box in some place where it would not show so plain, for it was very ugly and a perfect nuisance. The old blue box sets in ma's room where she is boarding now, under her window.

34. Q. Did your supervision of that box continue down to the time of your uncle Lewis' death?

A. Yes; and up to the present day. When we were at Waverly Terrace it set in ma's room, and in it pa kept all his papers, as I well know.

Often when pa was sick I opened that box to get papers for him.

326 35. Q. What was that you said about Arthur's cleaning the room?

A. I said that he used to sweep the room, and that when I went in to dust it I would try to hide the box.

36. Q. Did that continue up to the time within two months previous to your uncle Lewis' death?

A. Yes; only in the last three weeks the room was not swept, but I was in there cleaning and straightening up every day.

37. Q. What was Arthur doing within this period you speak of?

A. What he had always done—going errands, attending to the door, and whatever he was wanted for. Uncle Lewis had John Voderey to attend to him and to be with him all the time. Arthur was there sometimes, but John was there always.

327 38. Q. Did Arthur attend to your uncle Lewis' room for a period of two months prior to his death?

A., Arthur or John, whichever one happened to be there.

39. Q. Arthur, then, did attend to his room during that period before his death?

A. I don't know that Arthur attended to it then; perhaps John might have done it. I don't remember particularly.

40. Q. There are some letters that you spoke of as being in your brother Thornton's handwriting. I want to call your attention to one or two expressions in them.

A. These letters are not addressed to me.

41. Q. These letters are written to your husband, are they not?

A. Yes, sir; on business matters, I believe.

42. Q. You have read them, haven't you?

328 A. I have not. I looked over them just now, when Mr. Webb gave them to me.

43. Q. These letters speak of "our firm" and "our business." What does he mean by that? Was your husband and your brother Thornton in business together?

A. Yes, sir; they were partners from the time we came from Cincinnati. I think we came in August. I don't know how long they were partners, so don't remember dates at all.

44. Q. Were they partners when this letter was written, dated October 25th, 1875?

A. I don't know; I could not tell you. I was sick at the time, and was not troubled with business matters. Nothing was said to me about it.

45. Q. What does he mean by this expression, do you know, "Since September 15, when our business with S. Carusi commenced?"

A. Why, I suppose they were to attend to pa's business.

329 46. Q. Professionally, as lawyers?

A. Yes; certainly, as lawyers.

47. Q. And charge for it and divide the profits?

A. Certainly, pa's and Doctor Howard's business; that was what they commenced on.

48. Q. He says, "According to your statement, our income has been $26.25—$25 from pa, an' $1.25 from Dr. H." That is Doctor Howard, I suppose. Is the doctor alluded to Dr. Howard?

A. Yes, sir.

49. Q. Your husband's father?

A. Yes, sir.

50. Q. Mrs. Howard, do you remember spending any time in the country with Mrs. Caulfield?

A. Yes, sir.

51. Q. When was that?

330 A. I can't tell you the exact time; it was September, though.

52. Q. The September previous to your uncle's death?

A. Yes, sir; I staid some time with Mrs. Caulfield in the country; when she moved in from the country of course I came with her, which was the first week in October, 1872.

53. Q. Did you remain at her house in town any time?

A. I used to go up there every night.

54. Q. And stay several nights?

A. Just over night; I came home every morning to breakfast.

Mr. HINE. That is all.

ISOLINA E. HOWARD.

Adjourned sine die.

331, 332 DISTRICT OF COLUMBIA,

County of Washington, ss:

I, John C Poor, examiner in chancery, do hereby certify that in pursuance to notice the foregoing depositions taken down and by me reduced to writing in the presence of and from the statements of the witnesses at the times and place designated in the caption thereof, and were then and there by me read over to the witnesses and by them subscribed in my presence and in the presence of counsel who were then and there attending; the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said or in any manner interested therein.

JOHN C. POOR,
Examiner.

333, 334 EXHIBITS TO COMPLAINANT'S TESTIMONY.

Exhibit No. 1, complainant's testimony.—Filed April 7, '79.

[Stamp, 50 cts.]

This indenture, made this eighteenth day of July, A. D. 1872, by and between Lewis Carusi, of the first part, and Samuel Carusi, all of the city of Washington, in the District of Columbia, of the second part.

Whereas the said party of the first part is in feeble health, and unable thereby to give to his business matters the attention they require for their judicious management, and reposing confidence in the good judgement and integrity of the party of the second part, to whom he has already given a general power of attorney to rent, lease, and otherwise manage his property in the said city of Washington, and in order hereby to enable him, the said party of the second part, the more effectually to carry out the ob-

jects, aims, and intentions of the party of the first part, he, the said party of the first part, executes these presents:

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the above-recited premises, and, further, the sum of five dollars, in lawful money of the United States, to him in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowl-
335 edged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and does by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, all those certain pieces or parcels of ground lying and being in the said city of Washington, and known and designate' as lots numbered six (6), seven (7), eight (8), and part of lot numbered five (5), in square numbered three hundred and fifty (350), beginning for said part of lot five at a point on 11th st. west eighteen feet and nine inches ($18\frac{9}{12}$) north of the southwest corner of said lot, and running thence north along said street twenty-one feet and five inches ($25\frac{9}{12}$), thence east one hundred feet and one inch ($100\frac{1}{12}$), thence south twenty feet and two inches ($20\frac{2}{12}$), thence west fifty feet and one inch ($50\frac{1}{12}$), then south one foot and three inches ($1\frac{3}{12}$), and thence west fifty feet (50) to the place of beginning; also parts of lots three (3), four (4), and five (5), in square numbered three hundred and forty-nine (349), commencing for the same at the southwest corner of said square, and running thence north along 11th st. west one hundred and thirty-five feet and four inches ($135\frac{4}{12}$) to the dividing *life* between lots five and six, in said square, thence east sixty-four (64) feet, then south one
336 hundred and thirty-five feet and four inches ($135\frac{4}{12}$) to C street west, thence west sixty-four feet (64) to the beginning; then commencing at the northeast corner of lot numbered five (5) and running westwardly along the north line of said lot thirty-five feet and ten and a half inches ($35\frac{10\frac{1}{2}}{12}$), then southwardly parallel to the east and west lines of said lot twenty-one (21) feet; then eastwardly parallel with the north line of said lot thirty-five feet and ten and a-half inches ($35\frac{10\frac{1}{2}}{12}$) to the rear or east line of said lot, then northwardly along the said east line twenty-one (21) feet to the place of beginning; and the east thirty-five feet and ten and a half inches ($35\frac{10\frac{1}{2}}{12}$) of lot numbered three (3), fronting on north C street, and running with that width through the whole depth of said lot three (3) and fourteen feet and four inches ($14\frac{4}{12}$) into lot five (5) in said square; and lots three (3) and four (4) in Machen recorded subdivision of original lots one (1) and two (2) in square numbered three hundred and forty-nine (349); also part of lot numbered three (3) in square numbered three hundred and twenty-four (324), being the east half of said lot by the depth thereof; and parts of lots numbered one (1), two (2), and fourteen (14) in square numbered three hundred and seventeen (317), commenc-
337 ing for said part of lot one at the northeast corner of said lot and running thence south three (3) feet, then west fifty (50) feet, then north three (3) feet, then east fifty (50) feet to the place of beginning; commencing for said part of lot two at the northwest corner of said lot and running south twenty-one feet, then east thirty-feet and one inch ($30\frac{1}{12}$), then north twenty-one feet (21), and then west thirty feet and one inch ($30\frac{1}{12}$) to the place of beginning; commencing for said part of fourteen (14) at the southeast corner of said lot and running north fourteen

(14) feet, then west seventy (70) feet, then south fourteen (14) feet, then east seventy (70) feet to the place of beginning; together with all and singular the buildings, improvements, rights, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining.

To have and to hold the said pieces or parcels of ground and premises unto him, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

In trust nevertheless to, for, and upon the following uses and trusts, that is to say, in trust to sell and convey the whole or any
338 part of the said pieces or parcels of ground and premises at the discretion of the said party of the second part, and to invest the monies arising out of such sale or sales in other property or securities for the use and benefit of the said party of the first part; and in event of the death of the said party of the first party, so much of said pieces or parcels of ground as may remain unsold, or such other property as may be purchased, or such securities as may be acquired, in manner aforesaid, to convey to such person or person, as the said party of the first part may, by his last will and testament or other paper-writing, under his hand and seal, by two persons witnessed, designate and direct.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year hereinbefore first written.

LEWIS CARUSI. [SEAL.]

Signed, sealed, and delivered, the words "under his hand and seal" being first interlined at eleventh line of fifth page hereof.

THORNTON CARUSI.

CHAS. CONS. CALLAN.

339 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Chas. Cons. Callan, a notary public in and for the District of Columbia, do hereby certify that Lewis Carusi, party to a certain deed bearing date on the eighteenth day of July, A. D. 1872, and hereto annexed, personally appeared before me in said District, and the said Lewis Carusi, being personally well known to me to be the person who executed the said deed, acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 18th day of July, A. D. 1872.

[SEAL.] CHAS. CONS. CALLAN,
Notary Public.

Exhibit No. 2 to compl't's Test'm'y.—Filed April 7, '79.

POWER OF ATTORNEY.

Know all men by these presents that I, Lewis Carusi, of the city of Washington, in the District of Columbia, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Samuel Carusi, of the same place, my true and lawful attorney irrevocable, for me and in my name, place, and stead, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises to

340 ask for, demand, sue for, collect, and receive all sums of money, debts, dues, accounts, and other demands of every kind, nature and description whatever, which are due, owing, or payable to me, or hereafter to become due and payable to me from any person or persons whatsoever, and to give good and sufficient receipts, acquittances, and discharges therefor, and to sign my name upon all leases, agreements to rent, contracts, or other paper requiring my signature, giving and granting to my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof I hereunto set my hand and seal, this fifteenth day of July, eighteen hundred and seventy-two.

LEWIS CARUSI. [L. S.]

Two witnesses who can write—
CHAS. CONS. CALLAN.
THORNTON CARUSI.

341 DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it known that on this fifteenth day of July, in the year eighteen hundred and seventy-two, before me, the undersigned, a notary public in and for said county and State, personally appeared Lewis Carusi, to me well known to be the identical person who executed the foregoing letter of attorney, and the same having been first read over to him and the contents thereof explained, acknowledged the same to be his act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

[SEAL.] CHAS. CONS. CALLAN,
Notary Public.

Exhibit No. 3 to compl't's test'm'y.—Filed April 7, '79.

1534 I, NW.

MY DEAR VENIE: I felt so sorry to leave you last night, and I almost felt tempted, I assure , to turn back, but then I knew that I ought to be at home. I have thought a great deal of the step Lina has taken. If she is going to try to establish the will of uncle Lewis of '69, being the only will he ever voluntarily signed (as I have papa' own words
342 to that effect in writing), I am with her; if not, then I shall and can protect myself, but I think papa's will should remain as he left it, even if we should lose every cent, rather than disgrace him in his grave. You know exactly what I think of it and how I feel about it, and I know that Thornton and Mc will fight her to the bitter end. It will bring us all before the world; but if the thing is brought into court it will be a very unhappy thing for all. There are some things connected with this affair that had better remain buried. You can read my letter to Lina, and I am sure she will think I am right. I send the box and valise and money to-

day. Add sent an old basque and overskirt for Toots to wear about the house. I could not find the little socks, and only one rubber doll; one of the dolls will say mama and papa. Fan's sent it to baby, as she says it will teach him to talk. If you want pictur's of the children you can have them, as I have more. I found all well. Write to me when you have time and tell me all the news.

With much love,

SISTER.

I will not be able to send the floor staining for some days, as Nast is sick and will not be able to get it for me. Please give Will three
343 dollars ($3) and tell him to take quinine as I told him. I have told Thornton exactly what occurred about Lou's mourning, because I knew Mac would tell his own tale, and I knew you would rather the truth should be told.

Exhibit No. 4 to compl't's testim'y.—Filed April 7, '79.

WASHINGTON, D. C., *Feb. 15th*, 1876.

DEAR BOB: Y'rs of the 11th inst. rec'd and contents noted. I do not and may never want to use my desk, until wh. indefinite period you are perfectly welcome to it. You can also keep for perusal the vol. of Gibbon desired, and I will write ma to that effect. I am sorry for Guest, as I have not a cent or dollar either. I have been getting my insurance, wh., as you know, is important and must be paid for. He need not be alarmed, however, for I can pay by M'ch 1st. At what time does the rent of the other office begin? Thus you will see that all collections from Samuel Carusi have ceased, and the firm is now entirely dependent on itself and the few dollars accruing from Dr. Howard, of wh. I have not collected any, and suppose you would not care to ask for any after the advance he has made to you. There is no legal business here whatever for
344 me, and as the court closes very soon *soon* I am feeling rather shaky, particularly as I have an important engagement to fill in the fall. Cannot come over till I get some rhino. Should I open an office here I will be glad to use old letter-heads and everything else I can get hold of.

Y'rs, etc.,

THORNTON.

[Thornton Carusi, attorney-at-law and solicitor of claims, room 4, 1427 F street.]

WASHINGTON, D. C., *M'ch 19th*, 1876.

DEAR BOB, *No. 6½ Law Building, Baltimore:* There are occasions on which the mind of man becomes singularly astute, and I consider your decision in the matter of our legal firm an illustration in point, for various reasons: First, because it was established in Balto.; secondly, because I have not fairly assisted you, except in attending to the only business which yielded us an income; but I offer as an excuse my firm conviction that the old fogies who inhabit that ancient burg will never give to a foreigner what would keep starvation from the door of some of the virtuous
345 youth of Balto., and because, to be prolix, I was afraid to 'rust myself to do without any money at all, for I should have made those

about me very unhappy—reasons enough to sink a ship; and sixthly, because, as you say, I am not deriving any benefit, though in that respect, unless things have suddenly changed, you have not fared much better. As to the accounts, I do not think that, if your letter is a showing, you have remembered all of the transactions; not that I make any complaint, but simply state that I started out with more individual expense than the amount you have credited me with; if you will think a moment you will see where your discrepancy is. However that makes no difference, only I am somewhat particular about putting my name to paper, and never do it unless things are right. For the cards I do not think I ever rec'd a bill, but I got them from Charlie Dodge, and he can verify my statement or make out a bill if he remembers the transaction, but he then had only a small press at his house, and, as we were associates, he probably did not think of making out a bill or I of asking for one. I may have one, however, among my papers, and, if so, can fix things straight. The
346 desk I do not care to sell; you can either keep it at your office or send it to No. 6. The pegion holes you may retain for an indefinite period, and the press keep for your own sake and God's, not to mention mine. I should much like to have a list of the books when you can send it, and I will make any collections you may send me on the terms offered, and if you wish to reciprocate on similar terms. "Barkis is willing," and, to begin with, you may make search for Mrs. Morgan L. Smith, relict, I believe, of the gen'l of that name, and if you find her I will send up her account. To be serious, we will break up as you suggest, and if in the future we should deem it advantageous to sign articles of copartnership I will be well pleased. In the mean time I will always throw into your hands whatever I can, and be ever your well wisher.

THORNTON CARUSI.

[Thornton Carusi, attorney at law and solicitor of claims, room 4, 1427 F street.]

WASHINGTON, D. C., *October 31st*, 1875.

DEAR BOB: I had written you a letter, but as it did not get off it will do, with a little addition, in the way of an answer to y'rs of the 29th inst.

347 To question one, I cannot see why you sh'd want a statement of rents from Sept. 15th when our business with S. Carusi commenced Oct. 1st; since that time there has been collected $480 from Rogers, $25 from Haney & Plant, $12 for Mrs. Boyd. As I told you in my last, I think we will have to confine our collections to rents accruing f'r the Comique. If that meets y'r views, please state the same to papa. Please see if that deed has been recorded and *and* first go to Williams and state the condition of the roof, and tell him I say that he represented to me that the house was tight and in good order, & I would like him to at least make good his words so far as to keep the water out. Don't deal with Barker, he is a sharp. Get the money from pa for the janitor, and I will make all I owe him good next month. According to your statement our income has been just $26.25, $25 from pa & $1.25 from Dr. H.; the last five I believe you have not received from pa, but he will give it to you. I will probably receive from Rogers $1.20 to-morrow; if so, I will announce the fact in my next budget. I do not see any business coming to my box, though I knock about a good deal of a night among men, &

have materially changed my habits, with a view to pecuniary advancement. Please tell pa that I will send him whatever I may have on hand after I pay Johnson & 830 to Burgdoff; things will probably be up the last of the week. Love to all. I hope you have a fire. I will have a stove to-morrow, & that & the fuel will take all the money I have over from my debts.

Y'rs, etc.,

THORNTON.

348 *Testimony of defendants.*

In the supreme court of the District of Columbia.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } Equity doc. No. 6078.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses begun and held on the 16th day of January, A. D. 1879, and continued from time to time by adjournment until the 19th day of February, A. D. 1879, when the within depositions were taken, there being present at the office of L. G. Hine, esq., number 452 Louisiana avenue, northwest, in the city of Washington, in said District, Eugene Carusi, John McLean Carusi, and Estelle Phillippa Caulfield to testify on the part and behalf of the defendants in a certain cause now depending in the supreme court of the District of Columbia, wherein Isolina E. Howard is complainant and Adelaide S. Carusi and others are defendants.

349 WASHINGTON, D. C., *January* 16, 1879.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } Equity. No. 6078.

Met pursuant to notice.
Present, counsel for plaintiff and defendants.

Mr. EUGENE CARUSI, a witness for the defendants, being called, on his oath deposes and says as follows:

Q. Please state your residence and profession, and how long you have resided there, and how long you have practiced your profession.

Ans. I reside in the city of Washington, have resided here since my infancy; I am a lawyer by profession, and have been practicing at the bar of this District about twenty years.

Q. State whether you were related to the late Lewis Carusi, of
350 Washington; and, if so, in what manner.

Ans. He was my uncle on my father's side.

Q. State whether you had, during his life-time, any business relations with said Lewis Carusi, and if you had, give the nature of those relations and when they existed.

A. I had business relations with him for a number of years during his life; for a number of years I transacted all of his most important business as his agent, and during a large part of that period I was his legal adviser.

Q. State whether you had opportunities during those relations, and what they were, to become acquainted with the handwriting and especially the signature of Lewis Carusi.

A. I had frequent opportunities to become acquainted with his signature during these business relations, was perfectly familiar with his signature, and, although I have not seen it for some time, do not think
351 I would have any difficulty in recognizing it now.

(Exhibits Nos. 1 & 2 attached to Charles C. Callan's deposition taken in this cause are here shown to the witness, and is further interrogated.)

Q. Please look at the signature purporting to be the signature of Lewis Carusi to Exhibits Nos. 1 & 2, and state, if you can do so, by whom they are written.

(Mr. Webb, counsel for plaintiff, objects to the question, because, in the answers filed in this cause the defendants have *have* admitted the due execution of the paper marked "Exhibit No. 1," and set up Exhibit No. 2 especially as a part of their defence.)

A. I do not know by whom they were written, but certainly neither were written by Lewis Carusi, nor do they bear the slightest resemblance to his signature.

Q. State whether you have any interest in the result of this suit.
352 A. None whatever.

Q. Please state where Lewis Carusi resided in July, 1872.

A. I think he resided with his brother, Samuel Carusi, on Capitol Hill, near the Capitol.

Q. Do you know the construction or arrangement of the house you referred to?

A. I know it only partially. I do not remember whether I was ever upstairs. I have been on the parlor floor.

Q. Describe, if you can, that parlor floor and its arrangements.

A. The house was a large brick house standing alone and fronting east. To the south of the house was a lot or alley-way with a gate by which you could enter. Entering the house by the front door you came into a hall from which you entered the front parlor by a door on the left of
353 the hall; further down the hall was another door on the left hand side, by which you entered the back parlor. My recollection is there were two parlors separated by a wide door; there were two windows in the front parlor looking east; there were two windows in the back parlor looking west; there was a back building to the house, one of the rooms of which was on the same floor as the parlor, and was occupied by my uncle, Lewis Carusi. My recollection is there were but these two doors of which I have already spoken of for egress or ingress to the parlors.

Q. Please describe the windows in the back parlor; also how the room occupied by Lewis Carusi was to be reached by a person going from that parlor.

A. I do not know that I ever noticed anything peculiar about the back windows. My recollection is that the parlor could only be reached from Mr. Lewis Carusi's room by one of the doors in back hall of which I have spoken.

354 Q. Please state what your recollection is as to the back parlor windows being cut-down windows or windows by which persons could pass as by a door.

A. I do not remember very particularly about the windows. My recollection is that a person would take a great deal of unnecessary trouble to get into the parlor by the back windows; that it would necessitate going into the back yard to do so.

Cross-examined by Mr. WEBB:

Q. Can you tell us how often you saw Lewis Carusi write in the last few years of his life?

A. I do not think that I saw him sign his name for two or three years prior to his death; it was almost, though not quite, a physical impossibility for him to do so; one of the symptons of his disease was a numbness and want of sensation in his hands, of which he complained.

355 Q. Did it become necessary in the last two or three years of his life, in any transaction of which you were concerned with Mr. Carusi, for him to sign his name?

A. I do not remember that I had any business transaction with him within two or three years of his death; his brother, Samuel Carusi, attended to all of his business during this time, I think.

Q. Do you remember how the windows in the back parlor of your uncle Samuel's residence on Capitol Hill were finished down to the floor; whether there was a door-way or opening or paneling resembling a door-way between the sash and the floor?

A. It may be that the lower part of the rear windows were paneled down to the floor, but I am not certain about it, and will not undertake to testify positively on that point; but I do remember that the parlor floor was several feet higher than the back yard.

356 Q. Was the door that separated the two perlors sliding doors or folding doors, so as to throw the two parlors into one, or was it a common door?

A. I do not remember whether the door was a sliding or folding door, but it was my recollection that it was a high and wide door, but not as high as the ceiling nor as wide as the room.

EUGENE CARUSI.

Adjourned until Saturday, January 18th, 1879, at 1 o'clock p. m.

357 *Deposition of J. McL. Carusi.*

WASHINGTON, D. C., *February* 18, 1879.

ISOLINA E. HOWARD
vs.
ADELAIDE CARUSI ET AL.

Met pursuant to notice. Present, Messrs. Hine and James, counsel for defendant, and W. B. Webb, counsel for complainant.

JOHN MCLEAN CARUSI, a witness for the defense, being called, who, first being duly sworn, deposes and says as follows:

Q. What is your age?

Ans. I am 46 years old; I am a son of Sam'l Carusi and nephew of Lewis Carusi, also a brother of the complainant in this cause.

Q. What is your business?

A. I am a contractor when in business. At present I am attend-
358 ing to the estate in controversy as coexecutor and agent under the will of my father. I have been acquainted with Lewis Carusi since my earliest recollection.

Q. Will you state what your social and business relations with Lewis Carusi were preceeding the last few years of his death?

A. My relations with him were always very friendly.

Q. State what your business relations were with him during the last several years of his life.

A. Well, I attended to good deal of business for him. I have collected rents for him. I have worked about the house to see it cleaned up, and help to paint it; the house is now the Theatre Comique; was then Carusi's Saloon.

Q. What were your social and business relations with him during the last year of his life?

359 A. They were very agre'able in every way. Well, I done business for him during the last year of his life, two or three times. I took charge of the property and I used to rent the place out for the use of a ball room and collected the rents. At uncle Lewis's request most of the time I slept at the hall.

Q. Where did Lewis Carusi reside during the last year of his life?

A. He resided at my father's house, on Capitol Hill, with my father.

Q. How frequent did you during that year visit your uncle Lewis at your father's house?

A. Not very often; when it was fine weather he would visit me.

Q. How frequent did you visit him during the last two or three months of his life?

A. I suppose in the last two or three months of his life I saw him two or three times.

360 Q. Who last cared for him in the last two or three months of his life?

A. I was always told that it was mother and Genevieve that took care of him.

(Answer objected to as hearsay.)

Q. Did you ever reside in the same house with him; if aye, where, and how long?

A. Yes, sir; I have resided in the same house with him; I don't remember how long; it was a year or two before, and down to the time he went to live on the hill with my father. He left me in charge of the assembly-rooms before he went to live with my father.

Q. What can you say of your intimacy with him during that time?

A. I was with him and slept in the same room, played cards with him, and talked over business subjects with him.

Q. Was his own property sometimes the subject of conversation?

361 A. Yes, sir; sometimes about the property.

Q. Did you ever hear him mention Isolina's name, the complainant, in connection with this property?

A. No, sir.

Q. Did you ever hear him mention her name in any connection; if aye, what did he say?

A. It was not very complimentary; I have heard him say she was a bad and disobedient child to her parents, and disrespectful.

Q. Did you hear him during the last two years of his life mention any one's name in connection with this property in reference to his or their enjoyment of it after his death?

A. Yes, sir.

Q. What care and attention did he require of you when you resided with him?

362 A. Well, I use to wait upon him and run errands for him; I went out riding with him frequently. He wanted me with him all the time; in fact he never wanted me to go away from the place.

Q. Did you occupy one of his houses; if aye, under what circumstances?

A. I did occupy one of his houses at my uncle's request. He put me in possession of it, and told me to remain there until he asked me for it, free of rent.

Q. When was this?

A. Eight years ago next May. My wife lived there; my father lived with me during the last two or three years of his life, and for the last two years my wife and I have occupied it.

Q. What was the relation between Lewis Carusi and your sister, Mrs. Caulfield?

A. They were always very pleasant, I have frequently seen them talking together. I never knew them to have any unpleasant words, he always *to* spake pleasantly of her.

363 Q. Do you know Charles Cons. Callan; if aye, did you meet him in this city a day or two before he testified in this case? And, if so, state what passed between you.

A. Yes, sir; I am well acquainted with him. The Saturday before he testified, I think it was, I left Mr. Hine's office going towards Seventh street; on Louisiana avenue I met his brother, James Callan, coming out of his office; he told me Charley was in the city and remarked that he would be glad to see me, and I told James Callan that I would be glad to see Charley myself; if he saw him before I did tell him to come to the Theatre Comique, that I would be there at eight o'clock. James Callan remarked then you can see him now, Mc, if you will go up on Pennsylvania avenue at some shoe store there; I did not find him there; I left the same message there that I left with his brother, that he would find me at the Theatre Comique. I stayed at the theatre a few minutes after eight,

364 but do not remember how many. I started to go home and just as I got out of the door I met Mr. Callan Samuel Lloyd; well, we spoke together and had a general conversation about the times, &c. I then mentioned that I had received a letter from Thornton Carusi in regard to some papers Mr. Callan had fixed up for Mr. Lewis Carusi; he told me he had acknowledged some papers up at the house; after he had put the seal on he had folded them up and had given them to Mr. Lewis Carusi; all this conversation took place while standing at the Theatre Comique bar. We went across the street after that, had a drink or two and talked about different things; then walked up to Pennsylvania avenue and Eleventh street,

corner of the avenue and Eleventh, at Harvey & Holden's, when he told me he was going to take the early train Sunday morning for home. I think next morning was Sunday morning.

Q. Did you subsequently meet him before he testified in this case; and, if so, what occurred at that meeting?

365 A. I met him on the morning of the day he testified. I am pretty sure I remarked to him, "Hey, you have not got off." He said, "No, I have not got off yet;" that he was summoned to testify in the Howard and Carusi case. I said, "Indeed! I hope you will testify right." He said to me, "You bet I will. I shall testify to the truth, I can't help who it makes and who it breaks." I told him I would not have him testify to a falsehood for all the money in Washington. That was all that passed between us on the subject.

Q. Callan stated, when testifying in this case, to an answer by the complainant, "Did he offer you any inducement if you would testify in any particular way?" "No; only that when I was sent for I would be taken care of." What have you to say to that?

A. No, sir; it is totally untrue. I never spoke to him of being taken care of, or anything of the kind.

Q. Were you familiar enough with the house in which Lewis

366 Carusi died to describe the entrances to the parlor? If you are, describe them.

A. Well, the front door fronted east; as you went in the front door on the left side of the hall there were two doors, one went into the front parlor and the other to the back parlor; there were two windows in the front parlor looking out on 1st street east; there were two windows in the back parlor looking west into the yard; there were no cut-down windows, nor no paneling under the windows to make them look like doors; they were old-fashioned parlors with folding doors to separate the rooms. The doors swung on hinges. Lewis Carusi occupied a room in the back building on the same floor with the parlors. Next, in rear of the dining-room, there was a passageway between his room and the dining-room, also between his room and the front hall. To reach Mr. Lewis Carusi's room from the parlor, you enter the hall from the back parlor, went through this short passage, then through the dining or sitting room, then

367 across another short passage into Mr. Carusi.

Q. Beside the dining-room you have already described as being on the same floor as the parlor, was there another dining-room in the back building?

A. There was a kitchen and dining-room below.

Q. You have stated that in the conversation between you and Mr. Callan he told you that after taking the acknowledgment to the papers he handed them to Mr. Lewis Carusi; are you positive that such was his statement?

A. Yes, sir.

(Question objected to as leading and incompetent.)

Q. Did you repeat what Mr. Callan had told you in that conversation to any body on that same day? If so, to whom?

(Objected to as incompetent and leading.)

368 A. I think I did to either Mr. James or Hine. I think to Mr. Hine.

Q. In that interview did Mr. Callan or did he not say anything about any papers having been delivered by him to Mr. Samuel Carusi when he took the acknowledgments?

(Objected to as leading, immaterial, and in the nature of cross-examination of their own witness.)

A. No, sir; he did not mention Mr. Samuel Carusi's name. Mr. Lewis Carusi was the one he said he gave them to.

Q. In your first interview with Callan at the Theatre Comique, did he tell you what was the object of his visit to Washington?

(Same objection.)

A. No, sir.

Adjourned to meet at the office of Mr. Hine, at 1 o'clock p. m., on Wednesday, February 19, 1879.

369 *Deposition of Phillippa E. Caulfield.*

HOWARD
vs.
CARUSI.

FEB. 19TH, 1879.

Met pursuant to adjournment, at the office of L. G. Hine, esq.

Present, Mr. Wm. B. Webb, for plaintiff; Messrs. Hine and James, for defendants.

Mrs. PHILLIPPA ESTELLE CAULFIELD, a witness for the defense, being duly sworn, deposes and says as follows:

Examination-in-chief:

1. Q. Please state your relationship to Lewis Carusi and Samuel Carusi. You are the neice of Lewis and the daughter of Samuel?

A. Yes, sir.

2. Q. The sister of Isolina Howard, née Carusi?

A. Yes, sir.

370 3. Q. What were your social relations with your uncle Lewis Carusi during his life-time?

A. Always pleasant, and just as they should have been between uncle and neice. I never had an unkind word with uncle Lewis in my life. He never spoke a harsh word to me or I to him; never in my whole life.

4. Q. Never during your whole life?

A. During my whole life; and I can recollect pretty well. Never had an unkind word with him on any subject.

5. Q. During your whole life-time and up to the death of Lewis Carusi were you on terms of intimate friendship with him?

A. Yes, sir; to the last moment of his life.

6. Q. Do you know, and if so will you state, what the social relation of your mother and Lewis Carusi were down to the day of his death?

371 A. My mother, after uncle Lewis went to live in my father's

house, attended to him, and cared for his wants. They seemed to be very friendly, indeed, down to the last moment of his life. They seemed to be on very pleasant terms as far as I could see.

7. Q. Isolina, in her testimony, states that your uncle Lewis hated her mother; what have you to say to that?

A. I never heard him say it. I have heard him say my mother was extravagant, but I never heard him say he hated her.

8. Q. Were they on friendly relations during his life-time?

A. Yes, sir. Never heard of them having any words one way or another. Uncle Lewis, before he came to live there, always visited at my father's house, and I never heard of them having any words.

9. Q. Where did Isolina reside during the few weeks before your uncle Lewis' death?

372 A. She was down at the farm for three or four weeks before uncle Lewis died. She stayed with me at that time down at the farm. I don't recollect exactly how long before, I think it was three or four weeks before uncle Lewis died. I came into town in October, and she came in with me.

10. Q. Did she give any reason, and, if yea, what, for taking up her residence with you?

A. She came on a visit to me, because she said she was afraid to stay in the Capitol Hill house, because it was haunted. She said she heard strange noises, and had been very uncomfortable; so she came out to stay with me.

11. Q. Was she residing with you during two or three weeks before your uncle Lewis died?

A. Yes, sir; she stayed at our farm. My husband drove her out there to the farm, and she stayed with me some few weeks before uncle Lewis' death.

373 12. Q. How long before his death was it that you and she removed to the city?

A. I don't think it could have been more than a week at farthest, because I did not get the house fixed, she stayed with me a couple of nights, too; after we got in town.

13. Q. What were Isolina's social relations with Lewis Carusi during the last year or two before his death?

A. Well, I don't know exactly. I have heard uncle Lewis say once that she had behaved very disrespectfully to mamma and pappa, and that he was going to alter his will on that account. He said she had been very noisy and boisterous there, and had behaved very badly. He said that to me not very long before his death, but I could not recollect exactly how long before. I think there were others present when he said it.

14. Q. What were Isolina's social relations with her mother and her father?

Mr. WEBB. I object to that as immaterial.

374 A. Some time Lina would be very pleasant at home, but at other times I have heard her dreadfully disrespectful to my mother and father. I have heard her speak to my mother in a way that would shock me fearfully. I have heard her do it several times, and the same way to my father.

15. Q. What were her social relations with her brothers and sisters?

Mr. WEBB. I object to that as immaterial.

A. At one time she did not speak to Genevieve for a long time. McLean and Pollando she was never very friendly with. Thornton she was friendly with for a time; afterwards they fell out. She now acts to Thornton the same as she did to the other boys; but at one time I know they were very friendly.

16. Q. How was it, then, with Thornton during the last two years?

(Question objected to as immaterial.)

375 A. Why, they have had no intercourse at all during the last two years. I know Thornton has expressed himself frequently as having no respect for her whatever.

17. Q. How recently before your uncle Lewis died did you visit him?

A. The night before he died.

18. Q. He died the next morning about breakfast time?

A. Yes, sir; he died at breakfast time. I was there about half past ten and stayed until eleven the night before he died.

Cross-examination by Mr. WEBB:

19. Q. Did you ever tell your sister Mrs. Howard or authorize any one else to tell her, that under certain circumstances you would join with her in this suit?

A. After my father's death?

20. Q. At any time.

376 A. No, sir. My sister Genevieve has a letter from me in which I said these words: "I want my father's will to be established. If Isolina should enter suit against it, I enter suit immediately against her for one-third of the estate."

21. Q. What did you mean by saying that you would enter suit for one-third of the estate?

A. My uncle Lewis always expressed his wishes in this way. Always, except on one occasion, he expressed it as his desire that his property should be divided between Sam's three daughters, except on one occasion.

22. Q. When did your uncle Lewis make these declarations?

A. About six weeks before uncle Lewis' death he told me that he would soon die, but that he would leave me comfortable. I think it was the last time I saw him up. I can't tell you exactly how long before his

377 death. He remarked to me that he intended to leave all his property to Sam, a very short time before his death.

23. Q. When was it that Lewis declared to you that he intended to leave his property to the three daughters of your father?

A. The last time he made that declaration to me was about six weeks before his death. But previous to that he had done so frequently.

24. Q. Do you recollect whether your uncle Lewis ever made a will in which he carried out that intention of giving his property to the three daughters of your father?

(Question objected to because not in the line of cross-examination, and because immaterial.)

A. I never saw such a will.

25. Q. Did you ever speak to anybody about such a will?

378 (Objected to because not in the line of cross-examination, and because immaterial.)

A. I have said what I say to you, that I had heard that uncle Lewis had made a will, but I had never seen it.

26. Q. Did you ever write more than one letter to your sister Genevieve about this matter?

A. I don't remember. I remember distinctly having written one letter, but I don't remember any other.

27. Q. Do you remember the date of that letter?

A. No, sir; it was a short time after I returned to Washington, one week after my father's death; it was a short time after that.

Mr. WEBB (handing a paper to witness):

28. Q. Is that the letter?

A. (After reading it.) Yes, sir; I think that is the letter.

29. Q. That is your handwriting?

379 A. Yes, sir.

Mr. WEBB. I offer this letter in evidence.

Mr. HINE. This is objected to because not in response to anything brought out in the direct examination, and because the letter appears to be addressed to "Vevie," and by what means it came into the possession of Mrs. Howard does not appear.

30. Q. In this letter you say, "If she" (meaning Lina) "is going to try to establish the will of uncle Lewis of '69, being the only will he ever voluntarily signed, as I have papa's own words to that effect in writing, I am with her." What will do you mean by the will of '69?

(Question objected to because inquiring about a matter that was not inquired about in the direct examination.)

A. I mean the will I had heard of, which I had never seen. Of course I had never read it.

380 31. Q. Who told you of that will?

A. Well, I could not name to you all the persons exactly. I have heard it from several persons.

32. Q. Name some of them.

A. My father, my mother, and several others I don't remember.

33. Q. Of the family?

A. Of the family; yes, sir. It was a thing that was talked of generally.

34. Q. Were the terms of the will the subject of conversation?

A. I think I heard something of it once or twice.

35. Q. Do you recollect what they were?

A. I don't recollect now. I heard a great deal of talk about the will, but I don't recollect exactly what it was.

381 36. Q. In any of these communications that you received about that will did you learn how your uncle Lewis had disposed of his property? And, if yea, just state what it was.

(Question objected to because an attempt to prove by parol the contents of a written paper, because it is immaterial and incompetent and not in the line of cross-examination.)

A. I heard that by this will of 1869 uncle Lewis meant that the property should be left to my father until his death, and that at his death it was to be equally divided between his three daughters, and $6,000 apiece to my uncle Nathaniel's three daughters.

37. Q. What did you mean by the words "voluntarily signed" in the letter?

(Objected to because an attempt to prove by parol the contents of a

written paper, because it is immaterial and incompetent and not in the line of cross-examination.)

382 A. I don't know what I meant exactly, except that I heard papa say that uncle Lewis' wishes should be carried out, and that the will would be the same as that of 1869. I had not read the will. After that I went to the court-house and read the will *the will* that was registered directly after my uncle Lewis' death.

38. Q. What did your father say about your uncle Lewis, with respect to his will of 1869, that lead you to say that was the only will he ever signed voluntarily, for which you had your papa's words in writing?

(Question objected to because it is not in response to anything called out in direct examination, and because it is incompetent and immaterial.)

A. I heard my father say that uncle Lewis' wishes should be carried out to the letter. I asked him what uncle Lewis' wishes were—what his will was. This was before I read the will. He said that uncle Lewis' will was the same as the 1869 will, with the exception of the clause

383 protecting the girls from their husbands. That was what my father said. I kept a little memorandum of it. I said to my father that I had not read the will, and asked his permission to go and read it, and he said I could do so.

39. Q. You did read the will that is on record?

A. Yes, sir; I went to the court-house and read it.

40. Q. Do you know in whose handwriting that will is?

A. I do not know, sir.

41. Q. Did your father say anything that led you to believe he supposed that your uncle Lewis had not signed the will that is on record voluntarily?

A. No, sir.

42. Q. When did your father speak to you about this will of your uncle Lewis, this will of 1869?

(Objected to as incompetent and immaterial.)

384 A. It was a bout a month after my uncle Lewis died; but he also said to me that that will had been destroyed.

43. Q. Was it in this conversation that your father told you that the wishes of your uncle Lewis should be carried out?

A. No, sir; my father told me that in the carriage the day we drove home from uncle Lewis' grave—at uncle Lewis' funeral.

44. Q. Did you make any attempt after your uncle Lewis' death to set aside the will that was placed on record?

A. No, sir. I made an attempt to get the legacy that my uncle Lewis had left me.

45. Q. Did you employ counsel for that purpose?

A. I employed Mr. George Peter, but afterwards withdrew, and wrote my father and told him that I was sorry for having done so, and would like to withdraw until after his death. My mother, I suppose, has that letter.

385 46. Q. Did you ever say to any one that your father and your sisters had obtained what you were entitled to, or had defrauded you of your rights in your uncle Lewis' estate?

A. No, sir; I never used any such words.

47. Q. Did you ever say that your father had defrauded you?

(Question objected to unless counsel comes somewhere near the rule by giving the name of the party to whom the pretended words were said, together with the time and place when and where they were said.)

50. Q. Did you not openly say at the table at Mr. Massey's house, on 9th street, that your father had defrauded you of $60,000 to which you were entitled?

A. No, sir; never.

51. Q. Or did you say he defrauded you out of one-third of your uncle Lewis' estate?

386 A. No, sir.

52. Q. Did your uncle Lewis, at all times during his life, when he spoke of your mother, speak of her kindly?

A. I never heard my uncle Lewis say anything against my mother except that she was extravagant; never in my life.

Mr. WEBB. That is all.

Redirect examination Mr. EUGENE CARUSI:

62. Q. Do I understand you to say that up to six weeks before his death you heard Mr. Lewis Carusi say on several occasions that it was his intention to leave his property to the three daughters of his brother Sam after Sam's death, but that after that time he expressed his disapprobation of the conduct of Mrs. Howard towards her parents, spoke of the trouble and annoyance that she had given him, and said that he would alter the disposition of his property?

387 A. Yes, sir.

63. Q. And leave his estate to his brother Samuel?

A. That is what he said to me.

64. Q. That was the last?

A. Yes, the last I ever spoke to him about it. He had been very much troubled and annoyed that day. He said he was going to leave it all to Sam the last time I ever spoke to him on the subject.

65. Q. Where was he when he told you that?

A. He was in his room, in the back part of my father's house. He was at that time walking about the floor. Some one had been there and had annoyed and troubled him very much; he was very much put out. I asked him what was the matter, and he made me that answer.

66. Q. At the time the letter you wrote to your sister Genevieve was written where was your sister Genevieve living?

388 A. With my mother in Baltimore.

67. Q. Where was your sister Mrs. Howard living?

A. Up on Gilmore street.

68. Q. Do you know how she got possession of this letter which has been offered in evidence?

A. No, sir; she was not living on North Carey street when my father died. I don't remember where she was living. I know that I went to her house a short time after my father died, and she was housekeeping I know. I don't remember how she got the letter; I only asked sister Genevieve to read it to her, but I did not write it to her.

69. Q. Do you know whether Genevieve ever parted willingly with the possession of it?

A. No, sir.

70. Q. Do you know whether Mrs. Howard had access to your sister Genevieve's papers and correspondence?

389 A. I don't know; I think she was at my father's house the day of his death, and I think the day he was buried; I don't know whether she came there afterwards or not; she did not come there during the week I stayed there.

71. Q. In the letter to your sister Genevieve, in speaking of the will of 1869 as being the only will your uncle Lewis ever voluntarily signed, you underscore the word "voluntarily;" did you mean by the use of that word that that the only will he ever signed without solicitation, or what?

A. I really don't know what I meant at the time. I had heard of that will of 1869, and I had heard that uncle Lewis made another will; but I don't know why I used that word; I could not tell you now what my feelings were at the time.

72. Q. Do you mean to be understood as implying that he had been induced to make any other will involuntarily?

A. No, sir; I did not mean anything of the kind.

390 73. Q. In point of fact, do you know that your uncle Lewis did ever execute any will involuntarily?

A. Why, no, sir.

74. Q. At the time you wrote this letter you seem to have thought that it was Mrs. Howard's intention to try to establish the will of 1869; is that so? You say, "I have thought a great deal of the step Lina has taken, if she is going to try to establish the will of uncle Lewis of 1869," etc.

A. I understood Mrs. Howard to say that she intended to establish that will; my sister Vevie was present at the time she said it, three or four days after my father's death.

75. Q. Was it supposed at that time that the will of 1869 was in existence?

A. No; we all understood it had been destroyed. I thought she was going to try to establish it.

391 76. Q. You were willing, if that will could be established, to have it done?

A. Yes, sir; I was willing.

77. Q. After you heard your uncle Lewis say, a short time before his death, that he would leave his property to his brother Sam, did you hear him again express himself as to his intentions in reference to his property?

A. That is the last time I heard him say anything about it; he went to bed a few days after that.

ESTELLE FILLYPA CAULFIELD.

392 *Cross-examination of John McLean Carusi.*

1. Q. During what month in 1872, the year Lewis Carusi died, did you attend to renting Carusi's saloon for balls?

A. I think it was in February or the latter part of January—the latter part of January or first of February.

2. Q. Were those the only months?

A. Well, I was there in January, February, in March; I think it was in May that I went to work on the street, or June. In June I think I went to work on the streets as a contractor.

3. Q. How often did you rent it, and to whom?

A. I rented it frequently; to several parties, parties that I don't exactly now remember.

4. Q. Mention some of them.

393 A. I rented it to the Schuetzen Verein; to a club that Mr. Bradley was then president of. I rented it to Professor Greenleaf. I rented it to several German associations; I don't recollect now what they were.

5. Q. For balls; all for balls?

A. Balls and parties—dancing parties.

6. Q. Professor Greenleaf was a professor of dancing, was he not?

A. Dancing parties; yes, sir.

7. Q. Then Professor Greenleaf gave a ball there?

A. Yes, sir.

8. Q. Who is he?

A. I don't know.

9. Q. Where does he live now?

A. I don't know.

10. Q. What Mr. Bradley do you mean?

394 A. Mr. Bradley? Why, they had club; he was the president; they gave a ball there.

11. Q. What Bradley is it; what is his name?

A. I don't know what his first name is. He used to work here in town. He is dead I believe. I was told he was dead the other day.

12. Q. Can you give us the name of any person to whom you rented it who is now living here in Washington?

A. I can't. Mr. William Dickson used to be around there a good deal; I don't know whether he recollects or not.

13. Q. In what year was this?

A. That was, I think, in 1872. I have answered all I can recollect about it.

14. Q. Why was it that you did not visit your uncle Lewis so frequently after he moved to your father's house on Capitol Hill as you did before?

395 A. Whenever I went upon Capitol to my father's house I visited Uncle Lewis in his room. I frequently met him in the yard. He would come down to the house to see how things were coming on. I visited him just as frequently then as I did at any other time.

15. Q. Whenever you went to the house?

A. Why certainly, whenever I went to the house.

16. Q. How often was that?

A. I don't know how many times that was.

17. Q. On the occasion of the two or three visits you say you paid to him in the last two or three months of his life did you and he converse about business matters?

A. No, sir; I was contracting then for the last two or three months of his life.

18. Q. When did you last see him on business?

396 A. I don't think I had any business with him for six or eight months *for six or eight months* before he died; that is, no particular business.

19. Q. Can you tell us about when it was that you heard him speak disparagingly of Mrs. Howard? Who was present at the time, and when did the conversation take place?

A. Well, sir, that conversation took place at his own room at Carusi Saloon. Him and I were playing a game of cards called "California Jack," which he was an expert in.

20. Q. About when was it?

A. That was, I think, before *before* he went upon the hill to live.

21. Q. Was any one else present?

A. No one but him and I.

22. Q. During the period that you had charge of Carusi's Saloon
397 where were your brothers, Thornton and Pollando?

A. Samuel Pollando was in California. Thornton was then in office here, I believe. He would come down there occasionally.

23. Q. When did your brother Pollando go to California?

A. I think it was in '67 or '68; somewhere along there. I am not sure; I think it was.

24. Q. Did he remain there all the time?

A. No; not all the time. He was away a short time.

25. Q. Did you remain at the saloon all the time?

A. No; after my return from North Carolina I stayed there from that time until I went to contracting.

26. Q. Please fix the date of your return from North Carolina.
398 A. I think I went to North Carolina in May, I think it was in 1870, and I returned, I think, the first of July, the fourth or sixth of July, or somewhere there, the same year.

27. Q. How often did you sleep in the same room with your uncle Lewis?

A. I could not tell you that; many a time.

28. Q. A great many times?

A. Yes, sir; many times.

29. Q. How many times?

A. I can't fix the number of times I slept with him—in the same room with him.

30. Q. Before you went to North Carolina?

A. After I came back from North Carolina.

31. Q. Did you sleep there constantly?

A. Yes, sir; night and day I was there at that house.

399 32. Q. Can you give the name of any person who joined you and your uncle Lewis in a game of cards at any time?

A. Yes, sir; Mr. Barry was the only gentleman who came to play cards with him and I.

33. Q. Is Mr. Barry still living?

A. No, sir; he is dead—I understand so.

34. Q. Can you tell us anybody else who came to visit your uncle Lewis then?

A. My Lord! I can't tell you all that were there. There was Doctor Duhamel, Doctor Dorillier, Doctor Miller, Doctor Hall, Doctor Morgan, and Doctor Leiberman, and old Plant. There were four or five other doctors, if you want to know their names.

35. Q. Did anybody else attend to Lewis Carusi's errands and business besides yourself?

400 A. Yes; my father used to attend to a good deal of his business. I used to attend to some of his collections and business matters, got money for him, collected rents, and so forth.

36. Q. How was it before he went on Capitol Hill to live?

A. Why, he used to go on Capital Hill and stay a while and then come back again. He would sometimes go on Capitol Hill and stay at father's house a month or so and then come back. One time, I remember, he went up to my uncle Nathaniel's—stayed a month or two. I went up in a buggy to uncle Nathaniel's and he came down with me.

37. Q. Did anybody besides yourself stay in the house with Lewis Carusi?

A. Yes; they did not stay in his room, though; they stayed in the house.

38. Q. Who were they?

A. The servant men. There were two, I think—Pete Whiting
401 I believe he went by that name—and Edward Austin.

39. Q. Was Arthur Brown there too?

A. No; Arthur Robinson was on the hill. He used to come down with my uncle from the hill, and would then go back again.

40. Q. You say you went to live in the house on 11th street belonging to your uncle Lewis, and have since resided there—are you sure of that date?

A. No, sir; I am not sure of the date. I went there at his solicitation any way.

41. Q. Did your father reside in this house on 11th street with you in the months of February, March, and April, 1877; the year he died?

A. I don't recollect now whether he was or not. He might have been there for a few days. I can't exactly say, though. He may have been down at my house to stay for a few days and then went back again.
402 It seems to me he was there too, because I was keeping up fires in his room for him about that time. I recollect something of that kind; I don't recollect much.

42. Q. How long did you remain at the assembly-rooms after your uncle Lewis went to live on Capitol Hill?

A. I remained there, I think, until either April or May, I can't tell which.

43. Q. While you were occupying the assembly-rooms, sleeping there night after night, who occupied the house on 11th street?

A. Let me see. I think I was rooming on 12th street, and in the early part of 1872, I think it was, or the latter part of 1871, uncle Lewis told me if I could get possession of that house I could live in it, stay there until he told me to quit, free of rent. Whether it was in the early part of 1872 or the latter part of 1871 I can't say, for I don't remember.

44. Q. Did your family occupy the house on 11th street during
403 the year 1871 and 1872, while you were at the assembly-rooms?

A. I think they did a short time before I left there, but I won't be sure about that, for I don't recollect what took place. I won't be sure whether they were there or not at that time, but I think I took the house a short time before I left the saloon, just before I went to contracting.

45. Q. Do you still continue to occupy that house free of rent?

A. I do, sir.

46. Q. I understand you to say, Mr. Carusi, that you never paid any rent for this house since you occupied it?

A. Why, no, sir; I did not. My uncle put me in it free of rent, and told me to stay there until he put me out.

47. Q. And then your uncle died and could not put you out, and you still stay there?

404 A. Yes, sir; and I am going to stay there until some one puts me out.

48. Q. When you met James Callan on Louisiana avenue, who spoke first about his brother Charles, you or James Callan?

A. James Callan.

49. Q. Did you tell James Callan why you wanted to see his brother?

A. I don't recollect whether I did or not; I don't think I said.

50. Q. Did you show James Callan the letter from your brother Thornton Carusi?

A. I did not, sir.

51. Q. Did you tell him what that letter contained?

A. I did not.

Mr. WEBB. That is all.

Adjourned to meet Monday, Feb. 24th, 1879, at 1 p. m.

405 And now comes the witness John McLean Carusi, at the time of signing his testimony, and corrects his answers to the 1st and 13th interrogatories on his cross-examination so they shall read as follows:

Answer. to 1st cross-interrogatory:

A. I attended to the renting of Carusi Saloon in the latter part of 1870 and the first part of 1871. I frequently went there in 1872.

Answer to 13th cross-interrogatory:

A. That was in the years 1870 and 1871. I have answered all I can recollect about it.

JOHN McLEAN CARUSI.

406 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John C. Poor, examiner in chancery, do hereby certify that in pursuance to notice the foregoing depositions taken down and by me reduced to writing, in the presence of and from the statements of the witnesses, at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence and the presence of counsel who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

JOHN C. POOR,
Examiner in Chancery.

407 *Will of Samuel Carusi.*

In the supreme court of the District of Columbia, holding a special term.

DISTRICT OF COLUMBIA,
Washington County, to wit:

The United States of America to all to whom these presents shall come, greeting:

Know ye that the last will and testament of Samuel Carusi, late of the District of Columbia, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for Washington County aforesaid, a copy of which is to these presents annexed; and that administration of all the goods, chattels, and credits of the said Samuel Carusi, deceased, is hereby granted and committed unto Adelaide S. Carusi and John McLean Carusi, the executors by the said will appointed.

Witness A. B. Olin, esquire, justice of the supreme court of the District of Columbia, this 11th day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102d.

Test: A. WEBSTER,
Register of Wills.

408 We do solemnly swear that we will and truly administer the goods, chattels, and personal estate of Samuel Carusi, late of Washington County, in the District of Columbia, deceased, to the best of our knowledge, according to law, and give a just account of our administration when thereto we shall be lawfully called. So help us God.

ADELAIDE S. CARUSI.
JOHN McLEAN CARUSI.

Sworn and subscribed before me this 11th day of January, A. D. 1878.

Test: A. WEBSTER,
Register of Wills.

409 Know all men by these presents that I, Samuel Carusi, of the city of Washington, in the District of Columbia, being in good health and of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made:

First. I hereby constitute and appoint my wife, Adelaide S. Carusi, to be executrix, and my son, John McLean Carusi, to be executor of this my last will, directing them to pay all my just debts and funeral expenses out of my estate.

Second. I give and bequeath to my said executrix, for and during her natural life, all my personal property of whatever kind; and on her decease give and bequeath the same to my children, John McLean Carusi, Samuel P. Carusi, Thornton Carusi, Estelle Caulfield, Genevieve Carusi, and Isolina Howard, or to their next of kin, respectively, share and share alike, to be divided among them in kind or to be sold and the proceeds thereof to be distributed equally among them, as the majority of them shall elect.

Third. I give and devise to my said executrix, without impeach-

410 ment of waste, all my real estate, to have and to hold during her natural life, with remainder thereof on her decease to my said children and their heirs respectively, share and share alike.

Fourth. The life estate in the real property hereby devised to my said executrix is subject to the right of my said executor to occupy during the life-time of the said executrix the dwelling house number nine hundred and six (906) on Eleventh (11th) street in said city of Washington, free of rent.

In testimony whereof I hereunto set my hand and seal, and publish and declare this to be my last will and testament, in the presence of the witnesses named below, this twenty-third (23) day of March, in the year eighteen hundred and seventy-seven (1877).

SAM'L CARUSI. [SEAL.]

Signed, sealed, published, and declared by the said Samuel Carusi as and for his last will and testament, in presence of us, who in his presence and in the presence of each other, and at his request, have subscribed our names as witnesses hereto:

JOHN C. WILSON,
No. 1225 F St., Washington, D. C.
CHARLES P. JAMES,
342 D St., Washington, D. C.
JAMES H. SAVILLE,
1315 M St., Washington, D. C.

411 Supreme court of the District of Columbia, holding a special term for orphans' court business.

DISTRICT OF COLUMBIA,
Washington County, to wit:

JANUARY 8TH, 1878.

This day appeared Charles P. James and James H. Saville, two of the subscribing witnesses to the foregoing last will and testament of Samuel Carusi, late of Washington County aforesaid, deceased, and solemnly, sincerely, and truly affirmed that they did see the testator therein named sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator, and in the presence of the other subscribing witness.

Test:

A. WEBSTER,
Register of Wills.

412 Supreme court of the District of Columbia, holding a special term for orphans' court business.

DISTRICT OF COLUMBIA,
Washington County, to wit:

JANUARY 8TH, 1878.

This day appeared John C. Wilson, one of the subscribing witnesses to the foregoing last will and testament of Samuel Carusi, late of Washington County aforesaid, deceased, and made oath on the Holy Evangels of Almighty God that he did see testator therein named sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, memory, and understanding, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of testator, and in the presence of the other subscribing witnesses.

Test:

A. WEBSTER,
Register of Wills.

413 DISTRICT OF COLUMBIA,
Washington County, to wit:

OFFICE REGISTER OF WILLS.

I hereby certify that the foregoing is a true copy of the original will of Samuel Carusi, deceased, and the probate thereto, filed and recorded in the office of register of wills for Washington County aforesaid; and also that the said will, after having been proven by the witnesses whose names appear in the foregoing probate, was, by order of the orphans' court of the District of Columbia, duly admitted to probate and record on the 8th day of January, A. D. 1878.

Witness my hand and the seal of the supreme court of the District of Columbia this 11th day of January, 1878.

A. WEBSTER,
Register of Wills.

Stipulation of counsel to read copy instead of original will.

It is hereby agreed that the within is a true copy of the will of Samuel Carusi of the property described in the bill of complaint in this cause, and that this copy may be read in evidence instead of the original, the formality of proof being dispensed with.

April 3, 1879.

W. B. WEBB,
Sol'r for Compl't.
JANNUS & HINE,
Sol'rs for Def't.

414 *Decree special term, dismissing bill.*

In the supreme court of the District of Columbia, April 24th, 1879.

ISOLINA E. HOWARD
vs.
ADELAIDE S. CARUSI ET AL. } Equity. No. 6078.

This cause coming on to be heard on the pleadings and evidence therein, and having been argued by counsel and duly considered by the court, it is, this 24th day of April, 1879, ordered, adjudged, and decreed that the bill of complaint be dismissed with costs.

Appeal prayed in open court.

By the court:

MACARTHUR, *Justice.*

415 *Decision of the court confirming decree below.*

In the supreme court of the District of Columbia.

ISOLINA E. HOWARD
vs.
ADELAIDE SOPHIA CARUSI, JOHN McLEAN Carusi, et al. } Equity. No. 6078.

MONDAY, 24TH, 1880.

Mr. Justice COX:

On the 18th of March, 1872, Lewis Carusi made his last will, containing the following provision:

"Second. And as to all my property, real, personal, and mixed, after the payment of my just debts and funeral charges as aforesaid, and the payment of the legacies hereinafter mentioned, I give, devise, and bequeath the same to my brother Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance; and that at his death the same, or so much thereof as he, the said Samuel Carusi, shall not have disposed of by devise or sale, shall descend to
416 my three beloved nieces, Philippa Estelle Caulfield, née Carusi, Genevieve E. Carusi, and Isolina Carusi, the daughters of my said brother, Samuel Carusi, as follows: To the said Phillippa Estelle Caulfield, née Carusi, the sum of five thousand dollars ($5,000), the remainder of my estate to be divided between Genevieve E. Carusi and Isolina E. Carusi, to share and share alike, as tenants in common, and not as joint tenants."

On the 18th of July of the same year he executed a deed of trust to Samuel Carusi, containing the following declaration of trusts:

"In trust, nevertheless, to, for, and upon the following uses and trusts, that is to say. In trust to sell and convey the whole or any part of the said pieces or parcels of ground and premises, at the discretion of the said party of the second part, and to invest the moneys arising out of such sale or

sales in other property or securities for the use and benefit of the said party of the first part; and in event of the death of the said party of the first part, so much of said pieces or parcels of ground as may remain unsold, or such other property as may be purchased, or such securities as may be acquired, in manner aforesaid, to convey to such person or
417 persons as the said party of the first part may, by his last will and testament or other paper-writing under his hand and seal, by two persons witnessed, designate and direct."

On the 17th of October, 1872, Lewis conveyed the same property to Samuel absolutely, in fee-simple, reserving to himself the rents and profits during his life.

On the 23rd of March, 1877, Samuel executed a will, devising all his real estate, which is admitted to include the property described in this suit, to his wife for life, with remainder to all his children equally in fee.

The complainant, who is the Isolina E. Carusi named in the will of Lewis, insists that by virtue of that will and the deed of trust of July, 1872, she and her sister Genevieve are entitled, subject to the pecuniary legacies, to the whole estate of Lewis. She files this bill, claiming that the deed of trust shall be declared to be in full force and effect; that the will of Lewis Carusi shall be declared operative to designate the persons to whom the estate of said Lewis was to go under said deed of trust after his death; that the absolute deed from Lewis to Samuel of October,
418 1872, be treated as fraudulently obtained and void.

The leading facts are the will of Lewis Carusi, of March 18th, 1872; the deed of trust from him to Samuel, of July 18th, 1872; the absolute deed from him to Samuel of October 17th, 1872, and Samuel Carusi's will of March 23rd, 1877.

I will first examine the effect and operation of Lewis Carusi's will, as if it were the only paper executed by Lewis Carusi, it contains two important provisions:

First. It gives and devises all his estate to his brother Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever.

Secondly. At his death it gives said estate, or so much thereof as Samuel shall not have disposed of by devise or sale, to his nieces, including the complainant.

The first provision, standing alone, gives a clear fee-simple estate, including unqualified powers of sale and devise. The second, which might otherwise be held to qualify the first, distinctly recognizes the power to sell and devise in Samuel. Now, Samuel, by his will of March, 1877, devised all this property to his wife for life, with remainder to all
419 his children. There was, therefore, nothing left for this complainant to take under the strict terms of Lewis' will, which only gave to her and her sisters what should not have been devised or sold by Samuel in his lifetime; but it is maintained by the complainant that the fact of the gift over to her and her sisters, after the death of Samuel, of itself qualifies the estate first given to Samuel and takes away from the power of devising; that the gift over in terms of what has not been devised is fatal to the power of devise. If this construction can be maintained, it must be by reforming the will and striking out from it the power to Samuel to devise, which is explicitly recognized. Can a court do this?

There are two classes of cases referred to in this connection. In the first, while the common-law doctrine is recognized that an estate may be given to one in fee-simple and yet on a contingency may be given over to another by way of executory devise, which gift over is held to qualify and re'train the first taker's control over the estate, yet it is further held that where the first taker is in terms vested with the power of absolute disposition the devise over is inconsistent with this, just as any re-
420 straint upon alienation is inconsistent with a convevance by deed of fee-simple and is void. (See 4th Kent, 271, Jackson vs. Bull; 10th Johnson, p. 19, Jackson vs. Livingston; 15th Johnson, 169, Ide vs. Ide; 5th Mass., 504, Burbank vs. Whitney; 24th Pick, 154, Ramsdale vs. Ramsdale; 21st Maine, 293, McRee's Ad. vs. Means; 34th Alabama, 372, Cook vs. Walker; 15, Georgia, 462, Fearne, section 667.) According to these authorities the devise over, under which the complainant claims, would have to be considered void, as inconsistent with the devise to Samuel.

Another class of cases consists of those which hold that the devise over cuts down and restricts a general gift to the first taker to a life estate, and which endeavor to reconcile such devise over with the power of disposition given to the first taker by limiting the latter to his life interest. This is a matter of construction. These authorities do not undertake to strike out the power of disposition from the will, but construe it as confined to the life estate of the first taker, in order to harmonize his rights with those of the remainderman. (See Smith vs. Bell, 6th Peters, 68; Lardner vs. Bridges, 17 Pick., 339; Terry vs. Wiggins, 47 N. Y., 516; Dean vs. Dumally, 36 Miss., and other cases.) It is obvious, however, that if the first taker has the power to devise the fee-simple after his death,
421 the rights of the remainderman after his death would be wholly inconsistent with such power of devise. The two cannot be reconciled by any effort of construction. *Had* this was recognized by the court of appeals of New York in the case of Terry vs. Wiggins, 47 N. Y., 516. In such case, therefore, the title of the second devisee could not be maintained without rejecting from the will the power of devise conferred by it upon the first taker, which no court can do. It seems to me, therefore, that in this case the devise over to the complainant and her sisters is inconsistent with the estate conferred in the first instance on Samuel Carusi, and would therefore be void. But admitting the interpretation and effect claimed for the will by the complainant, let us see what effect is produced by the deed in trust made subsequently.

This trust is to manage the property for the use and benefit of Lewis, the grantor, during his life, and upon his death to convey to such person or persons as Lewis may, by his last will and testament or other paper writing under his hand and seal, by two persons witnessed, designate and direct. It is not "to such persons as he has designated," referring
422 to a certain designation in the past, nor to such persons "as he may have designated," referring to a possible designation in the past, but to such as he "may designate," which is a clear and unmistakeable reference to the future. In point of fact, he never thereafter executed any will designating and directing to what beneficiaries the property should go, and no such designation took place by any new act unless by the absolute deed of October, 1872, which if valid would be fatal to the claims of the

complainant. If the will of March, 1872, be admitted to be in due form, so as to answer the purpose of a direction and designation under this trust, and it had never been revoked, it could be appealed to as establishing the rights of the complainant. A will only operates at the time of the testator's death. It is, therefore, whensoever executed, in its effect future as to any act done by him in his life. As Lord Mansfield expresses it in the case of Spring vs. Biles, 1st Term Reports, 435, note, such a reference means any will that shall be in existence at the death of the testator. A will, therefore, which is to go into effect after the date of an instrument like this, although executed before, fully gratifies the language referring to persons whom the speaker may by his last will and testament designate.

423 But this will was revoked by operation of law. It is a well-settled rule of law that when a testator, after executing his will, changes the legal seisin and conveys away the fee-simple, the will is thereby revoked, upon the implication of law that the testator has changed his intention. (See 4th Kent, 528, Bosely vs. Bosely's Executors; 14th Howard, 390.) And if this were not the rule, and if the instrument I am now considering were another will instead of a deed, still the first will would be considered revoked, because the second disposition is entirely inconsistent with it. The first purports to give absolutely to Sam, and, after his death to his daughters. The second gives neither him nor them anything, but gives the estate to him in trust for such persons as the testator may designate in future.

It therefore follows that there was never any valid instrument in existence, after the execution of the deed in trust, which could be called a designation and direction in regard to the beneficiaries under that trust, unless it be the absolute deed, which will not avail the complainant. To avoid this conclusion it is sought to establish a connection between the will and the deed in trust. If the deed had given the estate

424 "upon such trusts as I have by my last will declared," the deed would, by reference to the will, have made those trusts a part of the conveyance, and would have established them irrevocably. The grantor could no more change them afterwards than he could recall the title. But it is obvious that he did not mean to convey absolutely upon the trusts of that will, because he clearly reserves to himself a power to designate the objects of his bounty in future by either will or other paper. The only construction left for the complainant to rely upon is to treat the deed in trust as if it conveyed for the benefit of such persons as the grantor had already designated by his will, or might thereafter designate by will or other paper. To do this is to add language to the deed. It is not impossible that Lewis, the grantor, may have supposed that his will was unaffected by his deed in trust, and would take effect unless subsequently revoked, and that he may have had this in mind when executing this deed in trust. But, in the first place, this is mere conjecture. There is no evidence of that fact, even if such evidence were ad-

425 missible to control the interpretation of this deed. In the next place, such evidence would not justify the court in altering the terms of the deed.

We are now concerned with the interpretation of a regular conveyance under seal, and not a will, and certainly no parol evidence could be admitted of vague expressions uttered from time to time in order to inter-

polate new terms into such a conveyance. In the next place, the will cannot be relied upon as a designation or appointment such as this trust contemplates, because it is inconsistent with the trust. The trust is that Samuel shall convey to somebody to be designated by Lewis, and that, too, upon the death of Lewis. The will does not direct Samuel to convey upon his brother's death to any one, but simply gives the estate to him.

On these grounds it does not seem to me possible to construe this deed in trust as if it read that the beneficiaries should be those who are named in the past will or those who might be designated thereafter, but the deed in trust has reference to a future act of the grantor; and no such
426 act ever took place, unless it was consummated by the absolute deed of October, 1872. The will, then, is entirely out of the case. The deed in trust left the title in Lewis for the benefit of heirs general in case of his failure to appoint any special objects of his bounty. In that view the complainant would not be entitled to the relief she seeks if there were no subsequent conveyance. It becomes, therefore, unnecessary to inquire into the validity of the subsequent conveyance of October, 1872, because, whether that be valid or not, the complainant fails to establish any title to relief.

The decree below is affirmed.

I am requested to state that the chief justice dissents from this conclusions.

427 *Decree, general term.*

ISOLINA E. HOWARD
vs.
ADELAIDE S., JOHN MCLEAN AND SAMUEL POLANDO, THORNTON, GENEVIEVE CARUSI, AND PHILIPPA ESTELLE CAULFIELD.

This cause on to be heard on the 19th day of May, 1880, before the court, the chief justice and Justices Wylie and Cox, and was argued by counsel and submitted to the court. Whereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the decree of the special term for which the appeal to this court was prosecuted be, and the same is hereby, affirmed, with costs. And from this decree the complainant now in open court prays an appeal to the Supreme Court of the United States, and it is allowed.

428 STATE OF MARYLAND,
City of Baltimore, set:

On this 14th day of June, A. D. 1880, before me, the subscriber, a justice of the peace of said State in and for said city, personally appeared John F. Carrère, and made oath on the Holy Evangely of Almighty God that he is the owner of certain real estate in the county of Baltimore, State of Maryland, which is worth at least five thousand dollars ($5,000) over and above all debts or claims due or owing by him, to the best of his knowledge and belief, and that this valuation is made by him upon the basis of the assessment made by the tax department of said county, but that a greater value was placed thereon in the proceedings to divide the same

among those having interest therein, by appraisers appointed by the court, in 1879. He further swears that he is the same person who has signed the appeal bond in Howard vs. Carusi, &c., in supreme court of District of Columbia, equity No. 6078.

J. F. CARRÈRE,

Sworn to and subscribed before me the date above written.

DAVID M. POLLARD, *J. P.*

429 STATE OF MARYLAND,
Baltimore City, set:

I hereby certify that David M. Pollard, esquire, before whom the annexed affidavit was made, and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal of the superior court of Baltimore City, this 14th day of June, A. D. 1880.

F. A. PREVOST,
Clerk of the Superior Court of Baltimore City.

430 In the supreme court of the District of Columbia, the 18th day of June, 1880.

ISOLINA E. HOWARD *vs.* ADELAIDE SOPHIA CARUSI, JOHN MCLEAN CARUSI, Philippe Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi.	Equity. No. 6078.

Know all men by these presents that we, Isolina E. Howard and John F. Carrère, of Baltimore, Md., and Flo. Howard, of Washington City, in the District of Columbia, are bound unto the above-named Adelaide Sophia Carusi, John McLean Carusi, Phillipe Estella Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi in the sum of five hundred dollars, to be paid to the said Adelaide Sophia Carusi, John McLean Carusi, Philippe Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi, their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 14th day of June, 1880.

Whereas the above-named Isolina E. Howard has prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Isolina E. Howard shall prosecute her said appeal to effect, and answer all damages and costs if she shall fail to make good her appeal, then

this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ISOLINA E. HOWARD. [L. S.]
JOHN F. CARRÈRE. [L. S.]
F. HOWARD. [SEAL.]

Sealed and delivered in presence of—
R. HOWARD, as to Isolina E. Howard & John F. Carrère.
W. B. WEBB, as to F. Howard.

431 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, , clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 12' day of October, 1880.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 12' day of Oct., 1880.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 12th day of October, 1880.

[SEAL.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

(Indorsement on cover:) No. 153. Isolina E. Howard, appellant, vs. Adelaide Sophia Carusi, John McLean Carusi, Phillipe Estelle Caulfield, Samuel Pollando Carusi, Thornton Carusi, and Genevieve E. Carusi. Dist. of Col. sup. court. Filed 18th October, 1880.

109-725

SUPREME COURT U.S.
FILED
NOV 14 1883
JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

ISOLINA E. HOWARD

vs.

ADELAIDE SOPHIA CARUSI,
JOHN MCLEAN CARUSI AND OTHERS.

No. 153.

Brief for Appellant.

W. B. WEBB,
ROBERTSON HOWARD.
Counsel for Appellants.

R. O. POLKINHORN, PRINTER,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

ISOLINA E. HOWARD

vs.

ADELAIDE SOPHIA CARUSI, JOHN MCLEAN CARUSI AND OTHERS.

No. 153.

Brief for Appellant.

The bill filed in this cause seeks a decree, declaring, first, that a deed of trust executed by Lewis Carusi during his lifetime, and exhibited with said bill (R., 5), is in full force and effect; and, further, that a will made by the said Lewis Carusi (R., 2), and with said bill also exhibited, is operative as designating the beneficiaries under the said deed of trust and its terms and conditions. The bill also prays that the will of Samuel Carusi (R., 128), in so far as it devises any portion of the estate of which Lewis Carusi died seized, may be declared null and void; that Thornton Carusi, one of the defendants, may be required to account for the rents and profits of the estate of Lewis Carusi by him collected at any time; that a receiver may be appointed to take charge of and manage said estate; that the defendants, Adelaide and John McLean Carusi, may be restrained and enjoined from in any way interfering with said estate, and for such general relief as complainant may show herself entitled to.

Statement of Case.

Lewis Carusi, the bachelor uncle of plaintiff, during his life was seized of the large estate in controversy in this case. At the time of his death he was about 78 years of age (R., 83), and for several years previous thereto was so enfeebled by disease that he was compelled to entrust the entire management of his property to his brother, Samuel Carusi, the father of plaintiff, as his confidential agent and adviser. So completely did Samuel obtain control of his affairs that he even signed Lewis' bank checks. (Test'y Mrs. Howard, R., 68; Flood, R., 46; Austin, R., 94, 98; defendant's test'y, R., 113.) For about a year before he died Lewis lived in Samuel's house. (R., 114.) Samuel Carusi employed his son, Thornton Carusi (at that time a student of law) to assist him in managing Lewis' property, especially when any papers were to be drawn. (R., 68.)

For many years previous to, and up to the time of, his death Lewis openly and freely declared his intention to leave his estate, at his death, to his brother Samuel for life, and at his decease to Samuel's two daughters. These declarations were made before and *after* the execution of the will exhibited in this case. Toward Mrs. Caulfield, whom he originally intended to share equally with the others, he seems to have changed, and he determined to leave her a legacy of $5000 only. (R., 85; Miss A. M. C. Wright, R., 64; R., 81.)

Anna M. C. Wright testifies that Lewis "always wanted it (*his property*) left to his brother Samuel during his life time, then, after his death, he wished it to be divided between his two nieces, who were single. He never wanted *any other man* to enjoy his property, except his brother Samuel. (R., 63, 65.) He did not wish *any males* to enjoy his property, except his brother Sam. (R., 63, 83.) He expressed a preference for his single nieces. He said that they had no one to take care of them, and that was the reason he left them the property." (R., 64, 84.) At the request of Lewis she, the witness, Anna M. C. Wright, prepared a paper containing his instructions in regard to his will sometime before he made the will exhibited. At that time he wanted to leave his property to his brother Samuel during his lifetime, and at his death he wished it to go to

his *two* single nieces. He left legacies to each of his brother Nat's daughters, and the same amount to Mrs. Caulfield. (R., 64, 69 to 71.) He sent the will which he had executed to witness' room after her return home, and afterwards asked her if she did not think it was a good will, and said "he left his nieces sufficient to support them without being married." In this conversation he did not have the will before him. (Test'y, R., 65, 84.)

Mrs. Howard testifies that Lewis always declared that he intended his property for his three nieces (Samuel's daughters), and that he never wanted any one else to have a dollar of it, and that if he thought any one of Sam's *sons* would ever enjoy one copper of it he would sink it in the Potomac and die poor before they should have it; that he said this before and after the execution of his will, and up to his death—heard him state this repeatedly; that he made these declarations before other members of the family, strangers and every one he spoke to about it. (R., 69, 73.) Witness *intended* to say, and thinks she did say, that Lewis always said that Samuel was to enjoy the property during his life. (R., 73.) That Lewis had had some difference with Mrs. Caulfield three or four years before his death (R., 73), but consented to leave her the same legacy he left his brother Nat's daughters when Miss Wright drew his will. (R., 81.) That he told her to put in $5000 for each of Nat's daughters. (R., 82.) That Nat had made him promise to leave them something, and he intended to do it, and that he hoped thus to prevent a law suit. (R., 79.) Lewis never said he would leave his property to witness alone (R., 79), but always coupled Genevieve's name with hers. (R., 76.) After the execution of his will, Lewis repeatedly asked her if she had seen his will, and if she thought the money was so tied up that the boys could never get a copper of it; that if he thought they would he would sink it in the Potomac, as he had said a thousand times before. (R., 70.) Lewis made these declarations from the time witness could remember up to the time of his death. (R., 69.) Lewis sent witness to school for three years; paid for her education, and he was kind to her up to the hour of his death. (R., 101.)

Hallie Wright knew Lewis intimately, and saw him frequently up to within two years before his death, and "heard

him say but *one* thing, that he intended to leave his property to his brother, Samuel Carusi, during his life, and at his death it was to go to Isolina and Genevieve Carusi; that the boys did not *need it;* that they were strong and could work for themselves; that he did not want *any of the others to have anything to do with his property but the two girls*, after his brother Samuel's death, and that Mrs. Caulfield had a husband, and therefore *he* should not support her." (R., 83, 84.)

Edward Austin says of Lewis, several years before his death, that while he did not seem *friendly* towards *McLean Carusi*, he seemed *very fond* of Samuel's *two youngest daughters*. (R., 96.)

Samuel Carusi and Thornton Carusi told Callan that "Genevieve and Isolina, daughters of Samuel Carusi, were to be the devisees of Lewis Carusi." (R., 52.)

If the testimony of Mrs. Caulfield, one of the defendants, is *worthy of any credit*, it sustains complainant's witnesses, for she says that, except on *one* occasion, about six weeks before Lewis died he very frequently told her he intended to leave his property to Samuel's daughters after Samuel's death, (R., 119–120); but this witness is contradicted in every other statement—1st, as to Lewis' unkind feeling toward Mrs. Howard, she is contradicted by Father Wiget, (R., 86; Vodrey, R., 88; Mrs. Howard, R., 101). 2d. As to Mrs. Howard's absence from home, (R., 118; by Father Wiget, R., 85, 86). 3d. Her letter (R., 108) contradicts her account of its contents, (R., 117.) 4th. She denies, on cross-examination, (R., 119) what she admits on redirect. (R., 123.) That Lewis confides to her *alone* his desire to *change* his will and cut *her* and the others out for Mrs. Howard's conduct, is of itself very improbable, and would need corroboration before being accepted even if she was a credible witness.

With singular unanimity then does this testimony sustain the allegation in the last paragraph of the bill. Opposed to this alone is the testimony of McLean Carusi, one of the sons who says: (1st.) That he was on *most friendly* terms with his uncle Lewis. (2d.) That he slept *very frequently* in his room at the "Hall," and was there *night* and *day*. (3d.) That he collected his rents and managed his

business. (4th.) That Lewis furnished him a house free of rent. (5th.) That he visited him very frequently in his room after he went to his father's to live. Edward Austin, who McLean says then lived at the Hall, the residence of Lewis, with Lewis, (R., 94) swears: (1st. McLean was *not* on friendly terms with Lewis. (2d.) Never came to see *him*, but *always* asked for his father, and never slept at the Hall. (3d.) That no body but Samuel attended to Lewis' affairs, (R., 94, 99.) (4th.) Mrs. Howard says her father put McLean in one of Lewis' houses, and that he was *very angry* when he found it out, (R., 102.) (5th.) Vodrey and Mrs. Howard say McLean never came to see Lewis at his brother Samuel's, (R., 88, 102.) His testimony can neither harm complainant or help defendants in the least.

Evidence of Lewis' written instructions and of his repeated and unvarying declarations a long time before, up to and *after* the execution of his will, totally inconsistent therewith, together with the proof of other facts, is clearly admissible upon the question of capacity, undue influence and fraud. (Dennison's Appeal, 29, Conn. 402–405; *Shailer* vs. *Bumstead*, 99 Mass., 119–127; *Wateman* vs. *Witney*, 1 Kernan, (N. Y.) 165–169; *Reel* vs. *Reel*, 1 Hawks, 267–269; *Neel* vs. *Potter*, 40 Pa. St., 483; *Thornton* vs. *Thornton*, 39 Verm, 158–159; *Hughes* vs. *Hughes*, 31 Alabama, 524; affirmed in *Seale* vs. *Chambers*, 35 Al., 22.)

Lewis intentions were well known to Samuel, and were family talk. (Deft's Test., R., 69, 119.) The same month that Lewis requested (R. 69, 80,) Miss Wright to write out his instructions in regard to the disposition of his property, Thornton Carusi wrote the will exhibited in this case, devising, as the defendants claim, the whole of his property *absolutely* to Samuel Carusi, not for life, but in fee, and cutting down the legacies to Nathaniel's daughters, from $5,000 each, as directed by Lewis, to $2,000, divided among the three. After the execution of this will, Thornton Carusi showed it to Miss Wright who said: (R,, 69.) "Thornton, this will is not as Mr. Lewis wanted it: he did not want *Mr. Samuel to dispose of the property as he pleased;* he wanted it after his death left to *Samuel's daughters.*" Thornton said: "Nan you don't understand these terms of law. We could not draw a will in the blunt way you

drew that for Lewis." Thornton Carusi, the agent of Samuel Carusi, must have had the will, drawn by Miss Wright, in his possession, when he wrote the will, actually executed in *terms of law*, intended to defeat the clear intention of Lewis. The defendants do not even attempt to rebut the presumption of fraud arising from (1) the confidential relations of the parties; (2) the preparation of the will by the agent of the devisee, or (3) the fact that it was made by a feeble old man so near death, completely under the control of the devisee, or (4) the difference between the written instructions and the will actually executed. The burden of proof is upon them to show the entire fairness of Samuel Carusi and his agent, also an interested party in obtaining this will. Those claiming under Samuel Carusi are in no position then to claim a construction that would give Samuel more than a life estate.

The will, as prepared by Thornton Carusi and executed on 17th March, 1872, by Lewis Carusi, is as follows:

> Second. And as to all my property, real, personal and mixed, after the payment of my just debts and funeral charges as aforesaid, and the payment of the legacies hereinafter mentioned, I give, devise and bequeath the same to my brother, Samuel Carusi, to be held, used and enjoyed by him, his heirs, executors, administrators and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance; and that at his death the same, or so much thereof as he, the said Samuel Carusi, shall not have disposed of by devise or sale, shall descend to my three beloved nieces, Phillippa Estelle Caulfield, *nee* Carusi, Genevieve E. Carusi, and Isolina E. Carusi, the daughters of my said brother, Samuel Carusi, as follows: To the said Phillippa Estelle Caulfield, *nee* Carusi, the sum of five thousand dollars ($5,000), the remainder of my estate to be devided between Genevieve E. Carusi and Isolina E. Carusi, to share and share alike, as tenants in common, and not as joint tenants, and so that they, and they alone, shall have, possess, use and enjoy the same separate and apart from, and independent of, any husband either one of them may have at the time of my decease, or at any

time thereafter, and so that he or they shall have no right, privilege or power to control or interfere with any part of my said estate in any manner whatever, and so that the same shall not be subject or liable to any debt that any such husband may have incurred. I further hope, trust and desire that in the event either one of my said nieces, daughters of the said Samuel Carusi, shall not survive my said brother Samuel, that the share she might become entitled to, had she survived him, may be conferred and fall to the surviving niece or neices.

In no event shall any portion of my estate be subject to the control or interference of any husband either one of my said nieces may have at the time of my decease or at any time thereafter.

I give and devise to my three nieces, daughters of my brother, Nathaniel Carusi, the sum of two thousand dollars ($2,000.)

This will remained unchanged during the lifetime of Lewis Carusi, and, after his death, was, by Samuel, recognized as the last will and testament of Lewis, and by him propounded as such to the Orphans' Court of the District of Columbia, where, a caveat being filed against its admission to record by Nathaniel Carusi, it now remains unproved and unrecorded.

On the 18th of July, 1872, Lewis Carusi, by a deed bearing date that day, conveyed all of his real estate to Samuel Carusi in trust, to manage it during the lifetime of him, Lewis, with power to sell, &c., the language of the deed, after reciting Lewis' condition and his confidence in Samuel, being as follows: (R., 107.)

"In trust, nevertheless to, for and upon the following uses and trusts—that is to say, in trust to sell and convey the whole or any part of the said pieces or parcels of ground and premises at the discretion of the said party of the second part, and to invest the moneys arising out of such sale or sales in other property or securities, for the use and benefit of the said party of the first part; and in event of the death

of the said party of the first part, so much of said pieces or parcels of ground as may remain unsold, or such other property as may be purchased, or such securities as may be acquired in manner aforesaid, to convey to such person or persons, as the said party of first part may, by his last will and testament or other paper writing under his hand and seal, by two persons witnessed, designate and direct.

"In testimony whereof, the said party of the first part has hereunto set his hand and seal on the day and year hereinbefore written.

"LEWIS CARUSI." [SEAL.]

Signed sealed, and delivered in presence of—

THORNTON CARUSI,
CHAS. CONS. CALLAN.

Acknowledged before Chas. Cons. Callan, Notary Public, the 18th day of July, 1872.

Callan testifies (Rec., 51) that this deed of trust was prepared by him under instructions from Samuel Carusi; and that at the time he was informed by Samuel Carusi and Thornton Carusi that the daughters of Samuel, Genevieve and Isolina, were to be the devisees of Lewis Carusi, and that he had seen a paper to that effect. That he learned the names of the daughters from the will then shown to him. (R., 61.)

The deed is in the usual form, the attesting clause imports that it was signed, sealed, and delivered in the presence of the witnesses, Callan and Thornton Carusi. (R. 107.) Callan tstifies that the deed was delivered. (Rec., pp. 51, 55, 56, 57.) Mrs. Howard's testimony is to the same effect. (Rec., p. 100.)

Some attempt is made to weaken the effect of this testimony, but without success. Callan is entirely without prejudice or interest in the matter, and is distinct and positive in his recollection of the facts. Mrs. Howard, who is corroborated in rebuttal upon every point where defendants attempt to break her down, tells her story in such a way that its truth cannot be doubted. To these is alone opposed the denial of Thornton Carusi in his answer and his deposition. (Rec., p. 48.) He not only denies the delivery of the deed, but details what was done with it. He is contradicted in

every point. 1. In his deposition he testifies that the deed and power of attorney were executed on the same day; in his answer he avers that the power was executed three days before the deed. 2. He testifies that Callan left the house alone, and is contradicted by Mrs. Howard on that point. 3. That Lewis Carusi put the deed into a blue box, and the box into a closet in his room. 4. And kept his bed across the closet door, and is contradicted by Vodrey and Mrs. Howard. 5. That Samuel Carusi was not present when this deed was executed, and is contradicted by Callan and Mrs. Howard. 6. His statements with respect to the collection of rents of the estate are contradicted by his letters filed as Exhibit 4. 7. He is contradicted by his own admission that he could prove Samuel a trustee (R. 72.) From the relation of Thornton Carusi to Samuel in these transactions "his statements bind Samuel." (See 7 Wallace, 138–9.) 8. He denies that he ever refused to account, and it is shown that he said to Samuel, "No, sir, I'll be damned if I show *any man* my books and receipts," &c. (R. 72.) In addition to all this, Thornton Carusi is a party defendant, and is to be largely benefited by a decision that shall declare this deed of no effect; and it appears by the testimony of defendants themselves, that he had so far interested himself as to write a letter to his brother, also a witness, which was to be shown to Callan, giving his version of what occurred at the execution of the deed. (Rec., pp. 60–115.)

Mr. Justice Story, in this Court, in *The Santissima Trinidad*, 7 Wheat., 339, has forcibly said, that where a witness "speaks to a fact in respect to which he cannot be *presumed* liable to mistake, if the fact turns out otherwise, it is extremely difficult to exempt him from the charge of *deliberate falsehood;* and Courts of Justice, under such circumstances, are *bound*, upon principles of *law, and morality, and justice*, to apply the maxim *falsus in uno, falsus in omnibus.* What ground of judicial belief *can* there be left, when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood."

How perfectly reliable Callan's memory is, will appear from his confirmation by other witnesses, (1.) as to Samuel's leaving the room first, (R., 54;) (2.) as to Sam-

muel's carrying in his hand a bundle of papers, (R., 54;) (R., 100;) (3.) as to Deed and Power of Attorney being exe cuted the same day, (R., 58–48;) (4.) as to the table on which these papers were executed being a small, round table, (R., 54–48;) (5.) as to there being two doors leading from the hall into the parlor, (R., 25–112.) Apply this test to the answers and depositions of Mrs. Calufield, McLean Carusi and Thornton Carusi; and Complainant's case must stand as if they had never attempted to answer the charges of the Bill or to utter a single word of testimony in their own behalf.

But whatever doubt there may be upon other points, there can be none that the deed was duly and formally prepared to effect the purposes expressed upon its face, under the instructions of the grantee therein named, and that it was also in due form acknowledged before a notary, who, at the request of the grantee, attended at the house where Lewis Carusi was then domiciled, the house, too, of the grantee, for the purpose of taking that acknowledment. It is submitted that under all these circumstances the delivery of the deed is to be presumed.

In *Games et al.* vs. *Stiles*, 14 Pet., 326, the Supreme Court says:

And as to what constitutes delivery of deed, see—
Ruckman vs. *Ruckman*, 23 N. J. Eq., 259;
Nichol vs. *Davidson*, 3 Term. Ch., 547;
Brittam vs. *Work*, N. W. Reporter, 14, 421.

"In the conclusion of the deed it is stated to have been signed, sealed and delivered in presence of the subscribing witnesses, and they swear that it was delivered," and this is held as one of the evidences of delivery. And in *Gould* vs. *Day*, 4 Otto, 412, the same doctrine as to presumption of delivery is announced.

2 Wait's Law and Pr., 387, 388.

After the execution and delivery of this deed of trust, Lewis Carusi spoke of it to Mrs. Howard, declarin, thatg she and Vieve (meaning her sister Genevive, his other neice) "now had all" of his property, and told her to ask her father to show the Deed to her. (Rec. 70.) This confirms the testimony of Callan as to who was to be benefited by this deed—what trusts were inteded to be created, and under the decision of this Court in *R. R. Co.* vs. *Durant*, 5

Otto, 578, this is admissible testimony. Samuel Carusi, according to his own declarations to *Callan*, accepted this deed upon trust to convey the property to his daughters, and he and those claiming under him, are estopped from denying their right to a conveyance. (5 Otto, 579.)

The deed of trust (Rec. 5) executed on the 18th of July, 1872, by Lewis Carusi, refers in express terms to a testamentary disposition of his estate. Under it the estate is to be held by the trustee created therein until the death of Lewis, and is then to be conveyed to such persons as he, Lewis, by his last will and testament, or other paper writing, in due form, may designate and direct. Unless it can be shown that Lewis, at some time before his death, and with an intent to dispose of his estate after death, executed some paper in the form prescribed by the last-mentioned deed, this deed of July, 1872, is to be taken in connection with the will already referred to, and they, together, are to govern the disposition of his estate. The will is revoked by the deed, as a will, but is still in force as a designation of the parties to whom the estate is to be conveyed by the trustee in the said deed. And this position is sustained by the authorities, as will appear hereafter.

A very short time before Lewis Carusi died, after he was brought to bed in his last illness, Samuel Carusi, already a trustee for him, sent a Miss Wright, who lived in the family, to his (Lewis') bedside to get him to execute a deed of the property to him, (Samuel,) representing that such a deed would strengthen the will, and that unless he did make it Nathaniel Carusi, the other brother, would "surely break the will." (R., 71.) Miss Wright, who figures so conspicuously in this transaction, is disposed to remember very little, but *admits* that *at the request of Samuel Carusi* she went to Lewis to get him to make this deed. She "don't remember exactly" what Samuel told her to say to Lewis, but "*believes* it was simply to say that it would prevent a lawsuit." (R., 66.) Lewis said, "No; I don't want to sign any more papers; I don't want to be bothered with any such thing," (R., 71;) "that Samuel might be persuaded to give some of his money to those boys," (R., 72;) "that he had signed all the *papers* he wanted to sign—all he was going to sign." (R., 75.) Miss Wright said, "I will tell Mr. Samuel what you say, and see what *he* says." She left

the room and went to Samuel. (R., 71.) There is no evidence that Lewis Carusi gave any instructions or approved of the form of the deed executed. His first connection with it was when it was presented to him upon his death-bed for his signature, which he was too weak to affix. William G. Flood, who prepared the deed, says: "I never had any conversation with *Lewis Carusi* about the deed in question, but when the deed was prepared and delivered I carried it to Mr. *Samuel Carusi* at his residence on Capitol Hill. He (Samuel Carusi) then stated that his brother was very low, and desired to so arrange that his property should go to the benefit of the girls or neices. I then remarked, *that* is not the kind of deed you want; that it should be a *deed in trust* for their benefit; and if so desired, I could write another in that way." Samuel answered, "It was not necessary, as his brother was *willing* to trust him to do what was right about the *disposition of the property in relation to the girls*, and that he had had the management of the property for some time." (R., 45, 46.) This deed was obtained from Lewis by inducing the dying man to believe that it was necessary to prevent the disposition he thought he had made from being set aside by his brother Nathaniel, and was accepted by Samuel, already a trustee, with full knowledge of its object, and that Lewis trusted him to carry out his wishes in "the disposition of the property in relation to the girls," whom he desired to enjoy it. Even if Samuel Carusi had not been a trustee for Lewis to manage this property and finally convey it to those whom Lewis designated, it is plain that as he undertook to act as agent for those whom Lewis intended to benefit he could take no title to himself to the detriment of those for whom he pretended to act. Like the will and deed of trust, this last deed was *obtained*, *prepared*, and *procured to be executed* by the agents of the *grantee*. It was executed only eight days before Lewis died, and when he was unable, as the *deed* itself shows, to sign his name thereto. Mrs. Howard says: "When Uncle Lewis executed the last deed, the *day* he executed it he was very low and very weak—*just as weak as a child;* so weak that he could not remove the phlegm which accumulated in his own throat; my sister had to put a towel on her finger and clean his mouth out frequently. He was *very weak* and would have strangled if it had not been removed. He had *hiccoughs for some days;* I don't

know exactly how long. *He would be perfectly still, just like a dead man*, until you would rouse him up, except when he had hiccoughs." (R., 81.) Samuel Carusi, the grantee, brought in the witnesses to the deed, made a pretext for getting his own brother, Nathaniel, out of the way, left the house with him, and as soon as the coast was clear *Miss Wright*, who was waiting in the parlor with them, led the notary and witnesses into Lewis' room to procure the execution of the deed. (R., 71.) Miss Wright admits the deed "*was not read*" to Lewis, but *thinks* the notary told him "it gave his brother Sam all his property." (R., 67.) Although in the absence of the *clearest* and *most conclusive evidence* on the part of the defendants to show that Lewis *fully understood* this deed and *freely consented* to its execution, it will be *presumed to be fraudulent;* not a word of evidence is offered to overcome the presumptions of fraud or to sustain the deed, under which alone they lay claim to the estate of Lewis. It is an irresistible conclusion, from the evidence in this case, that Lewis Carusi, in executing the will of March, the deed of trust of July, and the absolute deed of October, 1872, had but *one idea and intention* in the attempt to dispose of his estate, namely, that the whole property, with the exception of certain legacies, should go to his two nieces after the death of their father, Samuel Carusi, who was to have a support out of it during his life. It is equally apparent that Samuel Carusi and his agents attempted to defeat this well-known intention and vest an absolute fee-simple title in himself, 1st, by preparing for Lewis a will so different in its language from the plain and simple written instructions he gave for its preparation; 2d, by fraudulently suppressing the deed of trust; and, 3d, by obtaining a deed intended to confer benefits on others than the grantee, but on its face absolute, and now set up to defraud the intended beneficiaries. Aside from all questions of construction, the acts of those claiming adversely to complainant and her sister entitle them in a court of equity to relief.

Before the death of Lewis Carusi, Samuel Carusi, under the deeds mentioned, took possession of the property belonging to Lewis, and managed it generally, leasing a portion of it for a term of years, collecting the rents, and making such disbursements in and about the same as were necessary. In all of this business he employed the agency of

the defendant, Thornton Carusi. During the lifetime of Lewis the income was under his control, but after his death Samuel applied the whole of it to the wants of himself and his immediate family, without any reference to the claims of the plaintiff and her sister, Genevieve, as beneficiaries under the deed of trust and will above mentioned.

After the death of Lewis Carusi, in 1872, proceedings were instituted by one of his brothers to have the absolute deed of the 17th of October, 1872, and the will set aside, upon the ground that they were fraudulently obtained by Samuel, and that at the time of their execution Lewis was mentally and physically incapacitated to make such papers. Proceedings were had in said cause, testimony taken, and finally, in 1876, a compromise effected by an agreement to pay $18,000 to Nathaniel Carusi, about the amount, the testimony shows Lewis intended for Nathaniel's daughters, (R., 82,) and securing that amount by mortgage on the real estate of Lewis Carusi, by means of which the question as to the capacity of Lewis Carusi to make the said deed and will was withdrawn from the court.

During her father's life the complainant forbore to institute proceedings for the purpose of enforcing her right under the will and deed of trust executed by Lewis Carusi, in the manner mentioned above, and the bill in this cause was not filed until after his death, and not until she had ascertained that her father had made a will, under which he devised all of the estate in his possession, meaning thereby, the property belonging to Lewis Carusi at the time of his death, in a manner contrary to the intention of said Lewis, and contrary, also, to the terms of the will and deed of trust executed by him as above mentioned.

This will was executed on the 23d of March, 1877, has been admitted to probate, and after providing for the payment of debts and funeral expenses, disposes of the estate in these words. (R., 128.)

> "Third. I give and devise to my said executrix, without impeachment of waste, all my real estate, to have and to hold during her natural life, with remainder thereof, on her decease, to my said children and their heirs respectively, share and share alike."

Samuel Carusi had no real estate of his own, and by the will above-mentioned intended to devise the estate of Lewis Carusi, which he claimed was his, under the absolute deed made by Lewis Carusi, in October, 1872, and before referred to. Under this will the executor and executrix, named therein, have taken into their possession the entire estate of Lewis Carusi, and are now enjoying the same to the exclusion of the complainant and in derogation of her rights.

In this condition of things the complainant filed the bill in this cause. Answers have been made by all the defendants, testimony taken, and upon hearing in the courts below, the bill has been dismissed. From the decree dismissing the bill the complainant has appealed.

Assignment of Errors.

The court below erred in its decree because—

1st. The complainant was entitled to have the deed of trust, made by Lewis Carusi on the 18th of July, 1872, sustained and declared in full force and effect.

2d. Complainant was also entitled to such a decree as should declare that the will made by Lewis Carusi was sufficient to designate the persons to whom the said Samuel Carusi should convey the said property upon the death of him (said Lewis.)

3d. Because the said deed of trust and the said will taken together determine the disposition of the estate of the said Lewis Carusi, and under them the said Samuel Carusi was bound, upon the death of Lewis, to convey said estate to the complainant and her sister.

4th. That the said absolute deed from Lewis Carusi to Samuel Carusi, made on the 17th day of October, 1872, is either void and of no effect, or is operative to entitle complainant to a performance of the trusts *ex maleficio* created by the acts of the Trustee.

5. Because the said complainant is entitled to have an account of the rents and profits of the estate of the said Lewis Carusi, from the time of his death, and such other relief as she asks in her said bill.

Let us here examine the effect of the following circumstances proven to exist.

1st. The will of March 18, 1872, was prepared by Thornton Carusi, the agent of Samuel, (and himself an interested party) (R., 69); the deed in trust of July 18, 1872, was prepared under the instructions of Samuel Carusi (R., 52); and the absolute deed of October 17, 1872, was also obtained by and prepared under Samuel's instructions, and was procured to be executed by Miss Annie Wright at the instance and request of Samuel—Samuel Carusi claiming to be the sole beneficiary under these papers.

2d. For a long time, previous to the execution of these papers, all of which were made in view of his death, Lewis Carusi was very old, infirm and of doubtful testamentary capacity, and at the time of the execution of the deed of October 17, 1872, was actually in *articulo mortis*—the variance in the will of March and the deed of October, from his known intentions affording *prima facie evidence* of his mental weakness and liability to be imposed upon.

3d. For several years before the execution of any of these papers Samuel Carusi stood in a fiduciary relation to Lewis Carusi and exercised great influence over him.

4th. The will of March 18, 1872, is contrary to the repeated expression of intention and written instructions by Lewis Carusi immediately preceding its preparation and execution; and the deed of October 17, 1872, is contrary to the admitted intention of Lewis in executing it.

5th. The entire absence of evidence that Lewis Carusi ever directed a will or deed to be prepared in the form in which the will of March 18, 1872, and the deed of October 17, 1872, were executed, or that he had knowledge of their contents and import. His declaration, after the execution of the will proving the *contrary* and his assent to the execution of the deed being insufficient.

It is submitted that the burden of proof, as to the entire fairness of Samuel in obtaining so great a benefit to himself in the management or disposition of the property of Lewis, is upon the defendants to rebut the presumptions of fraud

arising from the circumstances detailed in paragraphs 1, 2 and 3; and that their failure to rebut these presumptions, taken with the positive evidences of fraud set out in paragraphs 4 and 5, conclusively brand the conduct of Samuel as fraudulent in obtaining any greater interest in the estate of Lewis than was intended. The devise and deed, in equity will be enforced so as to effectuate the benefit Lewis intended to confer on his nieces—even at law the will would be void only as to the absolute devise to Samuel.

1 Philimore, 187, and also 199: *Billinghurst* vs. *Vickers;*
1 Curties, 397: *Sankey* vs *Lilly, &c.;*
1 Haggard, 384: *Ingram* vs. *Wyatt;*
2 Haggard, 84: *Marsh* vs. *Tyrrell, &c.;*
4 Haggard: *Blewitt* vs. *Blewitt;*
Swinburne on Wills, Pt. 2, § XXV., (11);
In re. Welsh, 1 Redfield, (N. Y.) 241;
Lake vs. *Ranney*, 33 Barber, 49, &c.;
Lee vs. *Dull*, 11 Abbott, Pr., 214;
McLaughlin vs. *McDevitt*, 63 N. Y., 213;
Hawley vs. *Sellers*, 46 Missouri, 147;
Drake's Appeal, 45 Conn., 16–22;
Hill vs *Barge*, 12 Ala., 687;
Hawley vs. *Anderson*, 12 Ga., 76;
Adair vs. *Adair*, 30 Ga., 102;
Tompkins vs. *Tompkins*, 1 Bailey, (S. C. Law) 94, 95, 97.

6th. The suppression of the deed of trust was itself a fraud, and occuring so near in point of time to the preparation and execution of the will and deed of October, affords *prima facie* evidence of the fraud practiced in obtaining those instruments, the same motive operating in each case.

Castle vs. *Bullard*, 23 Howard, 187;
Lincoln vs. *Claflin*, 7 Wallace, 138;
Bottomly vs. *U. S.*, 1 Story, 135;
McLaughlin vs. *McDevitt*, 63 N. Y., 219.

7th. When the absolute deed of October 17, 1872, was executed, the will and deed of trust were in existence and

known to Samuel Cafusi, who had been made a trustee to manage the property for Lewis and to convey it to those designated by Lewis, and consequently this deed of October was a deed obtained under very *suspicious* circumstances by a trustee from his *cestui que* trust in terms defeating the trust, there being nothing in the case to show that the grantor intended at any time to change the settlement of his estate already made by him, but conclusive proof that the said absolute deed was made upon representations as to its purpose and effect, not true in point of fact; this deed was then fraudulent as to any interest derived to Samuel.

Tyler vs. *Black*, 13 Howard, 231;
Smith vs. *Rickerts*, 13 Pet., 26;
Boyce vs. *Grundy*, 13 Peters, 210;
Perry on Trusts, S. 171, and cases in Note.

8th. If Samuel Carusi *prepared*, *obtained* or *accepted* an absolute devise or deed from Lewis Carusi, with the purpose *known to Samuel* that such devise or conveyance was to accrue to the benefit of the complainant and her sisters, and it shall appear that Samuel has retained the entire benefit thus obtained, and refused to carry out that purpose—such acts are *fraudulent and will raise a trust by implication of law*—for the benefit of the complainant and her sisters; and further that, as trusts arising by implication of law are excepted from the operation of the Statute of Frauds, the terms of the trust may be shown by *parol* even where the Statute of Frauds is relied on as a defence in the answer.

Russell vs. *Jackson*, 10 Ware, 211, &c.;
Fee vs. *Ferris*, 2 Kay & Johns, Ch. 357;
Walgrave vs. *Tibbs*, Ib. 321;
Jones vs. *Bradley*, Law Rep. (Ch.) 3, (1867 & 8) 362;
McCormick vs. *Groyhan*, Law Rep. 4, Appeals 82, (1869 & 70);
Frazer vs. *Norris*, Law Rep., Eq. Cas. XV., pp. 318–333;
McLellan vs. *McLean*, 2 Head, (Tenn.) 684;
Williams vs. *Vreeland*, 29 N. J. Eq., 417;
Dowd vs. *Tucker*, 41 Conn., 197;
Brook vs. *Chappell*, 34 Wisc., 405;
Brown vs. *Lynch*, 1 Paige, Ch. 152;

Barrell vs. *Hanrick*, 42 Alabama, 60;
Owing's Case, 1 Bland, 402, (Md.);
Hoge vs. *Hoge*, 1 Watts, 215;
Morey vs. *Herrick*, 6 Harris, 128;
Jones vs. *McKee*, 3 Barr., 496;
Thompson vs. *White*, 1 Dall., 424;
Hunter vs. *Rosmanier*, 8 Wheaton, 211;
Babcock vs. *Wyman*, 19 Howard, 299.

From these authorities then, it is submitted, that *even* if Samuel Carusi had not been the confidential adviser or trustee of Lewis—if Samuel had not himself prepared these papers, and Lewis had not been so old and feeble in mind and body, the fact that Samuel was fully informed of Lewis' intention in executing these papers, and being so informed accepted them, not properly setting out the beneficiaries, and then excluded from all benefit, those intended beneficiaries, would be sufficient to raise a trust by implication of law, that equity would be bound to enforce.

The trust created by Lewis Carusi in his deed to Samuel Carusi, of 18th July, 1872 (Rec., p. 105), empowers Samuel, the trustee, to sell and convey the whole or any part of the property therein described, and to vest the proceeds in other property or securities for the benefit of Lewis, and upon the death of Lewis requires him to convey the whole of it, as it exists at that time, to such persons as he, Lewis, "may, by his last will and testament, or other paper writing under his hand and seal, by two persons witnessed, designate and direct." The complainant claims that the will of Lewis Carusi of March, 1872, was the will referred to by him in the deed of trust, and is sufficient to designate those to whom Samuel Carusi, as trustee, was to make the conveyance.

In the case of "*Mayor, &c., Baltimore* vs. *Williams, &c., trustees*, 6 Md., 235, the court holds that a deed in trust conveying property to trustees in trust for grantor during her life, and after her death in trust for the persons and upon the trusts set out in her will and codicils, executed previous to the deed in trust, created an irrevocable trust, and that those claiming under the will and deed of trust had a better title than one who actually paid a money consideration to the original grantor and claimed under a sub-

sequent absolute conveyance. Accordingly, the court decided that the party claiming under the subsequent absolute deed was not entitled to the benefits assessed in favor of the owner of the ground thereby conveyed, but that the same legally belonged to those claiming under the will and deed of trust."

LEGRAND, Justice, who decided the case below, and who was *fully sustained* by the court of appeals, says: "I do not hold the opinion that Mrs. Chase reserved to herself a power of revocation. On the contrary, an examination of the authorities has satisfied me that the estate passed under the deed to the plaintiff, and that the will and codicils, as they existed at the time of the execution of the deed, are only to be looked to for a declaration of the uses, and an ascertainment of the limitations on the estate disposed of." The title to the property passed to the trustees by virtue of the deed in trust for the persons named in the previously executed will—the will operating not as a devise, but as a declaration of the uses and trusts of the subsequent deed.

In *Bath* vs. *Montague*, 3 Chancery Cases, 98.

Lord Chief Justice Holt also says: "I take it that a deed is not revocable because it has an immediate effect, and can be no otherwise revoked but according to a power reserved in the deed itself, and that is Hussey's case, Moore 756. A man makes a will, and he makes a feoffment to the uses mentioned in his will, *though the will be revoked*, as here it is, yet it is a sufficient declaration of the use."

Enrollment being equivalent to delivery at common law, it can make no difference that there is a deed of bargain and sale instead of a feoffment. (6 Md.)

In Hussey's case, cited in above opinion, a bastard made his will, and thereby devised a certain manor. He afterwards made a feoffment of the same manor to the use of such persons, and for such estates as he had declared in his will. It was held that the feoffment *revoked* the will, but that the will was a good declaration of the uses of the feoffment. Moore, 756.

And in Sugden on Powers, Vol. 1, 431, it is stated as the doctrine of the cases, notwithstanding an apparent difference in the ruling of the court in *Doe* vs. *Dilnot*, 2 Bos.

and Pull., (New Rep.,) 400, that a revoked will is sufficient to declare the uses of a feoffment or fine, citing Moore, 789, and *Spring* vs. *Biles*, 1 Term Rep., (in note), 435. And see, also, in confirmation of this doctrine, *Mayor and Common Council of Baltimore* vs. *Williams, supra.*

In *Doe* vs. *Dilnot, supra*, the estate was to revert to the grantor and his heirs, in default of appointment, which words show that he did not refer to his will then existing; therefore, this case is not contrary to the decision of Lord Mansfield, in *Spring* vs. *Biles.*

Notwithstanding there was no ownership in the lands when the will was executed, Preston, Vol. 3 m., p. 177, Abstract of Title, contends that the will *should have been held to be a declaration of use, so as to pass the lands by force of the subsequent conveyance.*

So where a person covenanted by indenture to levy a fine, to use of such persons as he *should nominate*, (apparently requiring a future nomination) by his will, made his will devising lands to certain persons, and *afterwards* levied a fine in pursuance of the covenant, it was held, that the levy of the fine revoked the will, but that it was nevertheless good as a nomination of the persons to whose use the fine was levied. *Lutwich* vs. *Mitton*, W. Jones 7.

This case and Hussey's case are cited by Cruise in his digest, Tit. 32, ch. 12, sec. 5, as authority for the proposition: "That a revoked will can operate as a declaration of the uses of a feoffment."

It makes no difference in respect to this rule, that the will was made prior to the deed as respects, and is not specifically referred to in that instrument, the effectiveness of the will as a designation of the persons to whom the property was to be conveyed. In *Lynch* vs. *Milton, supra*, the language would have seemed to demand a *future will*; and so in *Spring* vs. *Biles.*

In *Spring* vs. *Biles*, Lord Mansfield decided that a will made *four years* previous to a surrender of five copy, holds to the lord of the manor, "to the use and behoof of such persons, and for such estate and estates under such conditions limitations, and provisions as the surrenderor *shall*, by his last will, direct or appoint," was a good declaration of the

uses of the subsequent surrender. He decided this caes upon the principle that a will is ambulatory in its nature, and although executed before the surrender answered the requirements of the surrender. He held that the surrenderor must have meant any will in *existence* at his death, thus regarding the intention of the surrenderor. He did not consider the surrender a republication of the will, for he refused to allow the acquired copy hold to pass thereby, and if there had been a republication this would have been contrary to his former decision in *Heyden* vs. *Heyden*, (Cowper, 130,) where the words "declared or to be declared" worked a republication; and in *Doe* vs. *Davy* (Cowper, 158), where the will was republished by codicil, and the after-acquired copy hold thus brought within its provisions. That the operation of the will in *Spring* vs. *Biles* is precisely the operation we claim for the will in our case, will appear by the quotation from Cruise, Dig. Tit., 38, C. 4 (Devise of Copy-holds):

> "As the Statute of Wills only mentions lands held by Knight service and in Socage, they do not extend to copy-hold estates; but a power of devising this kind of property has long been indirectly exercised by an application of the *doctrine of uses*, similar to that which was anciently resorted to in respect to *free hold lands*. For this purpose the copy-holder surrenders his estate to the use of his last will, and then disposes of it by his will, which *operates as a declaration of the uses of the surrender, and not as a devise under the statute of wills*."

In *Spring* vs. *Biles*, the will could not operate *as a devise* even if it had been made *after*, instead of *prior* to, the surrender, but only as a nomination or designation of the persons whom the lord of the manor was to admit as tenants to the respective estates, those persons denominated by Sir Wm. Blackstone (2d Blackstone, p. 367) "*cestui que use*," were to enjoy.

In our case, the will could not operate as a *devise* even if it had been made *after*, instead of *prior* to, the deed, but only as a nomination or designation of the persons to whom the trustee was to convey, and as "a set of instructions" to him as to how he should make the conveyance.

The fact that no direction to convey was contained in the prior will is no greater an objection to it than an absence of a direction, in the will in *Spring* vs. *Biles*, to the lord to admit certain persons would have been. In either case the will could only have had effect as a designation and direction, and if not for that purpose sustained, would have failed altogether.

Justice COX, in rendering the very decision here appealed from, makes use of these expressions:

> "If the will of March, 1872, be admitted to be in due form, so as to answer the purpose of a direction and designation under this trust, *and it has never been revoked*, it COULD be appealed to as establishing the rights of the complainant. A will only operates at the time of the testator's death. It is, therefore, *whenever executed* in its effect, *future* as to any act done by him in his life. As Lord Mansfield expresses it in the case of *Spring* vs. *Biles*, 1 Term Rep., 435, note, such a reference means *any will* that shall be in force at the death of the testator. A will, therefore, which is to go into effect at the date of an instrument like this, *although executed before, fully gratifies the language* referring to persons whom the speaker *may, by his last will* and testament, designate."

As no attempt is made to set up the will as a devise passing any estate, what has the question to do with its operation? It is only on the *technical* principle that the testator must be seized of the *same estate* in the lands devised continuously and uninterruptedly from the time of executing his will to his death that the alteration of estate revokes the will, and that cannot work a revocation of a writing which is only a declaration of use in any event.

In all the cases, *Mayor* vs. *Williams*, 6 Md., 235; Hussey's case, Moore, 756; *Bath* vs. *Montague*, 3 Chan. Cas., 98; *Lytwich* vs. *Nutton*, W. Jones, 7; *Spring* vs. *Biles*, 1 Tenn. Rep., 435 note; Crusie Tit., 32, C. 12, § 5 (Sugden Powers, 321), the will was held a good declaration of the use *notwithstanding the revocation as a devise.*

Undoubtedly, then, the will of March, 1872, is sufficient, (unless there was some other paper executed for that purpose, after the deed of July, 1872,) to designate the persons to whom and the estates upon which the trustee must be decreed to convey the property. The effect of the deed of October 17, 1872, will be considered after we construe the trust created by the deed of July, 1872, and the will of March, 1872.

II.

The will of Lewis Carusi, taken with the deed in trust, is not to be governed by the ordinary rules of construction as applied to a devise of real estate. The deed of trust confers power on the trustee to convey, and the will is to be looked upon as "a set of instructions" to the trustee as to how and to whom he shall convey. Now these two papers thus operating *together*, are *together* to be construed as creating an *executory trust*. The distinction between an executed and an executory trust has long been clearly established, and in England such family settlements are very common indeed. In this country they are not so common; but the English cases have always been relied on as law in the distinction thus made as well as in the different rules of construction to be applied to the two classes. Kent (vol. IV, m., p. 305): "Trusts are of two kinds: executory and executed. A trust is *executory* when it is to be perfected, at a future period, by a conveyance or settlement, as in the case of a conveyance to B, in trust, to convey to C. It is *executed* either when the legal estate passes, as in a conveyance, to B, in trust, or for the use of C, or where only the equitable estate passes, as in the case of a conveyance to B, to the use of C, in trust for D." This is in accordance with the decision in *Ould* vs. *Washington Hospital*, 95 U. S. 312.

In *Potter* vs. *Doby*, 2 Richardson (So. Ca.), 51, the court say: "The test of an executory trust is, that the trustee has some duty to perform, for the performance of which it is necessary that the title be regarded as abiding in him."

There can be no doubt that we here have to deal with an *executory trust* just as if the trustee, Samuel Carusi, had come into this court praying to be instructed as to whom

and upon what terms he should make the conveyance. The court must necessarily order him to make, as required by the deed in trust. While executed trusts are to be construed as legal estates in executory trusts, much greater latitude is allowed, and the intention of the party creating the trusts is to be fully carried out, even at the expense of technical rules of legal construction.

Chancellor Kent uses this language: (Kent's Comm., 4 Vol., m. p., 304,) "But though equity follows the law and applies the doctrines appertaining to legal estates to trusts, yet, in the exercise of chancery jurisdiction over executory trusts, the court does not hold itself strictly bound by the technical rules of law, but takes a wider range and more liberal view in favor of the intention of the parties."

1. Where the court decrees a strict settlement it will limit the estate to trustees to preserve contingent remainders, though not so directed in the conveyance directing the settlement.

Harrison vs. *Naylor*, 2 Cox Ch. Cas., 151 m., p.
Stamford vs. *Hobart*, 1 Brown Ch. Cas., 288.

2. Where a testator, by executory trust, directed that after the death of his wife his nephew, C. W. (whom he feared was unreliable), should "be considered heir to all his property not otherwise disposed of," and that his executors should "secure the property for the benefit of his family," and, in the nature of a trusteeship, for the parties who might be interested thereafter," Lord Cottenham ordered the real estate to be settled on the nephew for life, with remainder to his sons successively in tail male, with remainder to his daughters, as tenants in common, in fee; and that the personal estate should be settled upon the nephew for life, with remainder to all his children, as joint tenants, with proviso that in event of all the children dying under twenty-one, and in case of daughters unmarried, and in case of sons without lawful issue, the personalty should be held in trust for the nephew absolutely.

White vs. *Briggs*, 2 Phillips' Chancery, 583.

3. A direction to trustees to settle property upon the wife of testator's son, "should he marry," was held to authorize the settlement of a jointure upon the wife of a *second marriage.*

Mason vs. *Mason*, 5 I. R., Eq. 288.

4. Where an executory trust would be void as a perpetuity, the court, in order to carry out testator's intention, will order a settlement to be made as strictly as the law will permit.

Humbleston vs. *Humbleston*, 1 P. Wms., 332.

5. Where a father, by deed, conveyed property to trustees to be settled on his daughter and her issue, "so that it might not be liable to the debts or control of any husband she might happen to marry," it was ordered by the court that the daughter should have a power of appointment by will in default of issue.

Stanley vs. *Jackman*, 23 Beavans, 450.

6. It is well known that the rule in Shelley's case is as rigidly enforced in the case of an executed trust estate as in a legal estate; but in the case of an executory trust this rigid rule is relaxed, and the intention of the settler or testator carried into effect by the courts at the expense of the rule. The English cases, which are the foundation of the rule in this country, will be sufficiently quoted and commented on in the American cases we will cite. These cases fully recognize the distinction between executed and executory trusts, and declare that the latter are to receive the most liberal construction to carry out the intention of testator and settler. Chancellor KENT, in speaking of executory trusts (4th vol., Comm. m., p. 218,) says:

> "So, also, in decreeing the execution of executory trusts, the Court of Chancery has departed from what would be the *legal operation* of the words limiting the trust, when applied to *legal estates.* But when the will or settlement is in the light of *a set of instructions merely* for the *purpose of a conveyance to be made* by the directions of chancery, a court of equity will follow the instructions and execute the trust in *conformity to the intention.*"

Read, also, m., p. 304.

Wood vs. *Burnam*, 6 Paige, 518–520:
Talman vs. *Wood*, 26 Wendell, 19–20;
Edmondson vs. *Dyson*, 2 Kelley (Ga.,) 321–324;
Potter vs. *Dober*, 2 Richardson Eq. So. Car., 51;
Homer vs. *Lytle*, 4 Harris & Johns, (Md.) 434;
Sanders vs. *Edwards*, 2 Jones Eq., (N. C.) 136–7.

In the citation of these cases we have purposely refrained from quoting cases of marriage articles where the same liberal rule of construction is followed, because there exists in those cases a presumption in favor of a benefit to the issue of such marriage, and the cases quoted are free from anything of this kind.

Now, in this case the defendants do not deny that Lewis intended to give his estate, after Samuel's death, to plaintiff and her sister, but only contend that the wording of the will, by a strict construction, gives an absolute fee to Samuel. They claim that "the legal operation of the words" govern the intention.

The authorities show that in the construction of an executory trust, the intention governs "the legal operation of the words."

Is the rule of construction contended for any more binding than the rule in Shelley's case which, as we have seen, is made to yield to the intention, in *every case*, of an executory trust? Must not these rigid rules of construction (admitting for the present they govern the case, as a devise standing by itself) be abrogated, and the true intent of the deed in trust and will, as an executory settlement, be decreed by the court? It must be plain that the deed in trust and will are to be construed together, and if the precatory words in the will do not create a trust, certainly the deed does. When the court directs a conveyance, as it is bound to do —to whom must the trustee appointed make that conveyance? Is it not bound to say the deed and will construed together indicate clearly that it was Lewis' intention that Samuel should not diminish the property further than necessary for his own support, and whatever was not thus consumed should go to his daughters? If Lewis Carusi had intended that Samuel should have this property absolutely

upon his (L's) death, why would he commit the absurdity of requiring him to make a conveyance of it to himself before he could enjoy it? Why make this trust-deed at all? Does this not rather show that Lewis Carusi, having great confidence in his brother Samuel, signed the will written by Thorton Carusi, Samuel's agent, (a student of law at the time), (R. 79), believing that by the words hope and trust, &c., he had created his brother a trustee to manage this property for his nieces after Lewis' death, with interest enough therein to support himself? Are not the words of this will calculated thus to deceive a man of ordinary intelligence? If Lewis Carusi intended this property absolutely for Samuel, why was he so particular in defining the limitations to his nieces—inserting a clause to protect them from husband's debts, &c.? Again, why should he have provided that if one of these nieces should die before Samuel Carusi, her share should fall to the survivor? Did he not intend by this and expect that the survivors would take immediately upon the death of Samuel? Look at his declarations after the execution of this will to Miss Wright, (R. 65), to Mrs. Howard, (R. 70), and do they not show conclusively either that he did not understand the legal effect of the terms of his will, or that he did not know what those terms really were. He said that by that will he had provided for his nieces. How? By leaving the property to somebody *else absolutely*, as counsel contended; for, as defendants contended, Samuel had an absolute estate and nothing could go to nieces, even if he had not exercised his power of disposal. Then nothing stands in the way of a construction to carry out the real intention of Lewis Carusi, but the rigid rules of construction claimed by counsel as applicable to a devise, and those rules, if the cases we have cited are to govern this case as an executory trust, will not be allowed to defeat that clear intention.

But it is not as a devise at all that we are to construe the will, but only as a guide to the trustee in carrying out an executory trust. As we are to look at this "will in the light of a set of instructions merely for the purpose of a conveyance to be made by the directions of chancery, a court of equity will follow the instructions and execute the trust in conformity to the intention." 4 Kent, Comm. m., p. 219.

III.

While it is not incumbent on plaintiff to prove that technically construed as *a devise standing alone*, she would have had a title under the will of Lewis Carusi, she can even *there* sustain her title. It is only when the words "his heirs, executors, administrators and assigns forever," and similar expressions, are not contrary to other provisions and expressions of a devise construed as a *whole*, that a *fee simple* or absolute estate will pass. In this case there are words that restrain and explain these words, and there is a further provision, that is repugnant to an absolute fee in the first taker.

That the words "to be held, used and enjoyed by him," not coupled with the succeeding words, "his heirs, &c.," would only create a life estate in Samuel, is shown by *Broomit* vs. *Moore*. 9 Hare, 378, and *Goodright* vs. *Barron*, 11 East, 220, where the words were "*freely* to be possessed and enjoyed."

The great English authority in real estate matters, Preston, (Vol. 2 m, p. 157, on Estates,) says: But notwithstanding a gift of the "*fee simple*" or "inheritance" by these or any other equivalent terms, the gift, may by subsequent words, (citing examples), be explained and qualified to pass an estate for life or in tail. "To the same effect (m, p. 86, 2 vol. Estates,) quoting *Whilkins* vs. *Whiting*, 1 Bulstrode, 219, and other cases," he says: "These are only some of the many examples that occur on this point." It was unanimously held in *Whilkins* vs. *Whiting*, (*supra*,) that a devise to "A" forever (*in perpetuum*) if it had stopped, there would have created a *fee simple*, but, that a further devise upon "A's" death to his heirs, male, forever and in default of such heirs to "B" qualified the estate to "A," and that he took an Estate tail only with remainder to "B."

But for the operation of the rule in Shelley's case, he would have taken a *life estate* only.

The same authority, pp. 155–156, says: It is agreed that the devise of the *fee simple* of lands, will pass that estate in the lands, unless the testator afterwards disclose, as he may, an intention to give a particular estate. Read his

comments on Chyckis case, DYER, 357, whree it was held that a devise of a house in *fee simple* to "A" and upon her death, to "B," created only a life estate in "A" and that "A's" husband could not be tenant by courtesy.

In *Sumner* vs. *Partridge*, 2 Atkyns, 47, a devise to "A" and her heirs, and if she die before her husband, £20 a year to him for life, and remainder of the property to her children. Held, "A" had a life estate only, and her husband on her death was not entitled to courtesy.

In *Johnson* vs. *Johnson*, 1 McMullin Eq., (So. Ca.) 346, a devise to "M. J." and to her children after her for her and her family's use, passed a fee to "M. J.," but, says the Court, (see p. 347, near bottom,) "it would be different if there were a limitation over in the event of "M. J." having no children living at her death—that would restrict the matter to a life estate."

The Supreme Court of the United States, 6 Peters, 68 in *Smith* vs. *Bell*, after a thorough examination of the authorities, go even farther than this. The devise construed was as follows: "Also, I give to my wife, E. G., all my personal estate, whatsoever and wheresoever and of what nature, kind and quality soever, after payment of my debts legacies and funeral expenses, which personal property I give for *her own* use and benefit and DISPOSAL ABSOLUTELY; the remainder of said estate, after her decease, to be for the use of the said J. G. (his son)."

J. G., his son, sold his interest, and at the death of E. G., the party to whom he had sold, brought this suit against the husband—E. G. had married. It was held E. G. had only an estate for life, and that the son had a vested remainder which he could sell.

These authorities establish conclusively that Samuel Carusi took a life estate by implication, and we will now further demonstrate (1) that this life estate cannot be enlarged into a fee by any superadded power of disposition, and (2) that such power of disposition, if it could fairly be inferred in this case, would itself be qualified, by the remainder over, to such disposition as would be consistent with the ulterior limitation. It is plain from the fact that in *Smith* vs. *Bell*, where the estate for life was by implica-

tion, C. J. MARSHALL cites a case in which the life estate was expressly given (13 Vesey, 444), and that Mr. Justice FIELD applies the doctrine of *Smith* vs. *Bell* in *Brant* vs. *Va. Coal and Iron Co.*, 3 Otto, 333, to a case where the power of disposition was superadded to an *express* life estate; that there it makes no difference whether the life estate is implied or expressed.

Herring vs. *Barron*, 14 Ch. Div., 263;
Andrews vs. *Roy*, 12 Rich, (S. C.) 536;
Giles vs. *Little*, 104 W. S., 291.

In the most recent case on this subject, decided in 1880 by the House of Lords, "a testator, by his will, gave all his property to his widow, for the term of her natural life, to be disposed of as she may *think proper*, for her own use and benefit, according to the nature and quality thereof, and in the event of her decease, *should there be anything remaining* of the said property, or any *part thereof*, he gave said part or parts thereof to certain persons." Held (affirming decision of Hall, V. C.) that the widow had no power to dispose of the property by will, and that, on her death, it went to the ulterior trustees named in the husband's will.

So a devise of real and personal property to a wife, "to have and to hold during her life, and to do with as she sees proper before her death," did not enable the wife by deed, "before her death," to convey a fee. In this case there was no remainder limited after the life estate as in our case. Brant, who recovered the property, had bought out the interest of testator's heirs.

See *Brant* vs. *Va. Coal & Iron Co. & al.*, Supra.

In *Smith* vs. *Bell* (6 Peters, 79), the court, considering he question here discussed, say: "The difficulty is produced by the subsequent words: They are 'which personal estates I give and bequeath unto my said wife, E. G., to and for her own use and benefit and *disposal absolutely*.'" So far from allowing this *express* power of "disposal absolutely" to enlarge the *implied* life estate into a fee, the court held that the exercise of the power itself was restrained by the limitation in remainder to the son. The words, "the *remainder* of said estate, after her decease, to

be for the use of the said J. G.," are, we think, equivalent to the words "during life." They manifest with equal clearness the intent to limit the estate given to her to her life, and ought to have the same effect. It is to be noticed that here the words "disposal absolutely" were superadded to a devise in express words of any absolute estate.

Finally, in Brant's case, 3 Otto, the court, citing this opinion, adopt the theory that an *express* power of disposition added to a *prima facie* absolute estate may be controlled and restrained by a limitation of what may remain undisposed of at death of first taker. 3. The alleged power of disposition claimed in this case is no where *expressly* conferred upon Samuel Carusi by the testator. It is claimed simply from the fact that, at his death, "the same (property), or so *much* thereof as he shall not have disposed of by devise or sale, shall descend to my three beloved nieces," &c. As to the power of sale, it is evident, from the preceding part of this will, that it was the intention of the testator to preserve his property in tact until the death of Samuel Carusi, unless it should become "necessary for his support and maintenance," to sell a part of it. This power, then, was only a conditional power that could be exercised by Samuel during his lifetime upon the occurrence of the necessity. This power, then, certainly did not confer a fee, and, as it was never exercised, it is not necessary to consider what estate an alience would have taken had such been the case.

Lardner vs. *Bridges*, 17 Pick., 339;
Smith vs. *Bell*, 6 Peters.

The power to devise must be inferred from the use of the words "*or devise*," if it exist at all, for in *Herring* vs. *Barrow*, 13 Ch. Div., already quoted, Vice-Chancellor Hall argued that the provision that "in the event of her decease, *should there be anything remaining of the said property, or any part thereof*, said *part or parts*" should go to others, was *inconsistent* with a power to devise, although the widow had *full* power to "dispose of the property as she might think proper." That these words showed the testator intended that there should be property "remaining" at her death on which the devise over was to take effect, and that this devise over could not be defeated by a will executed by the widow.

In *Smith* vs. *Bell* (6 Peters, 83), the devise over to the son was of "the remainder of said property at her decease," and the chief justice, citing with approval the English case of *Upwell* vs. *Halsey*, 1 P. W., 651, says: "This decree is founded on the admission that in a case in which the first taker might expend an uncertain part of the property given, a *remainder might be limited.* The uncertainty of the sum which might *remain* formed *no* objection. The cases are numerous in which the "intention has controlled express words." In our case the use of the words "the same" is an evidence that the testator did not intend this property entirely for the benefit or disposal of the first taker, and the words following, taken in connection with the clause limiting the disposition during Samuel's life to a disposition for *his own support only*, explain why the "*same*," which is equivalent to the "*whole* property," might not remain for the devise over to take effect upon. There is no way of reconciling the direction to limit Samuel in the enjoyment of the property while he lived, with an unlimited right to dispose of it by will. Again, it is to be remarked that this is the case of a *remainder* limited to take effect *immediately* upon the death of first taker, and not depending upon the happening of any *contingency*, as a dying without issue or without children, &c., which words clearly imply an intention that such issue shall take before or in preference to the parties named in the executor's devise.

Lampley vs. *Blower*, 3 Ark., 396;
Willis vs. *Bucher*, 3 Wash. C. C., 373.

Applying the reasoning of C. J. MARSHALL to our case, the intention of the testator can be effectuated, and neither of the repugnant clauses expunged from the will.

IV.

Unquestionably, under the authorities already cited, if the will of Lewis Carusi of March 8, 1872, and the deed of trust to Samuel Carusi of July 18, 1872, were the only papers in the case, the deed and will would operate together—one to vest the title in Samuel as trustee; the other to designate the parties to whom, and the terms upon which, the estate of Lewis Carusi was to be conveyed by the trustee

after his death: bnt on the 17 October, 1872, Lewis Carusi executed to his trustee, Samuel Carusi, the deed of that date. This deed conveys to Samuel, in consideration of $1,000, the whole of Lewis Carusi's estate to hold, to him and his heirs, reserving to Lewis the right to dispose of the rents and profits thereof, during life. It is also provided, that the deed shall not take *full effect until he (Lewis) shall depart this life;* and it is witnessed by *three witnesses.* It cannot be contended that there was any sale of the property intended in this transaction. The deed was made simply for the purpose of more effectually carrying out the design of Lewis in the disposition of his estate. It was evidently prepared in this form by Samuel Carusi, that it might operate as an execution of the power of designation reserved to Lewis in the deed of trust, in the event of that deed being discovered as a devise, or as an absolute deed, according to circumstances. It is clear, that as Lewis Carusi reserved no power of revocation in the deed in trust, of July 18, 1872, he created an irrevocable trust, and could not execute any instrument after that date that could have any operation, except as an execution of the power of designating the parties to whom the trustee was to convey the property, in the event of his own death.

Bath vs. *Montague*, supra;
Mayor &c. vs. *Williamson*, supra;
3 Preston, on Abstracts, m. p. 181.

Then if the deed of October 17, 1872, is sustained at all, it must operate as an execution of this power. There was no estate in Lewis after the execution of the deed of trust, upon which it could operate as a deed for the express trust, limited for life to himself, prevented any resulting trust by which it would have been merged and destroyed.

Greenl. Cruise, Tit. XI., (use) c. 4, Sec. 42–48. inclusive.
1 Preston on Estates, m. p. 183; also, 191–196, inc.
3 Preston on Convey., (Merger,) 512–513.
Fonblanque's Equity, K. 11, c. v., § V.

That this deed was an attempt on the part of Lewis to prevent the final disposition of his estate according to his wishes, from being disturbed, is conclusively proven; and

if the grantee therein had been plaintiff, and her sister, as Samuel admitted *should* have been the case, (Rec. p.) this deed could have been sustained as a proper execution of the power. As a designation of Samuel Carusi as the *beneficiary* to whom Samuel Carusi, the *trustee*, is to convey, under the circumstances of this case, it must fail.

"When the capacity is doubtful at the time of execution and there is no evidence of instructions, especially, when the act is done through the agency of the party interested, the proof of mere execution is insufficient."

Sankey vs. *Lilly*, 1 Curties, 397; *Blewitt* vs. *Blewitt*, 4 Haggard, 463; *Marsle* vs. *Tynall*, 2 Haggard, 87–110.
Hawley vs. *Andersen*, 12 Ga., 76, [2.] 30 Ga., 102.

In *Tompkins* vs. *Tompkins*, 1 Bailey, (S. C.) 95–97, the will was not *read by, nor to, the Testator*, but he inquired if the residue of his estate had been left as he desired it to be, and was answered yes. When he signed the will there was no proof as to *what* instructions had been given. Held that the party who took an interest only as guardian of those to whom residue was left, and who wrote the will must prove instructions in accordance with the devise made. The signature was not conclusive.

In re Welsh, 1 Redfield, (N. J. Sur.) 241–242.
Take vs. *Ramey*, 33 Barber, 49, &c.
Lee vs. *Dill*, 11 Abbott Pract. Rep. (N. Y.,) 214.
Hill vs. *Barge*, 12 Ala., 687.
Platt vs. *Platt*, 58 N. Y., 646;
1 Haggard, (*Ingram* vs. *Wyath*,) 384–489.
46 Missouri, 147, *Hawley* vs. *Sullurs*.
Swinburne on Wills, Pt. 2, § XXV. (11.); Drakes Appeal, 45 Conn., 16–22.

As we have already shown if there had been no deed of trust in the case, Samuel Carusi would have become a *Trustee ex malificio* by reason of his action in obtaining this last deed from Lewis, with an understanding and confidence that it should be for the benefit of the neices, (Rec. p. 45) as admitted by Samuel himself. There is still less difficulty in so reforming this deed of October 17, 1872, viewed as an

execution of the power reserved to Lewis by the deed of trust. The case is realy plainer—for after the creation of the trust, Samuel appointed a trustee to convey to persons designated in a certain manner, could not obtain a designation of himself, as he is shown to have attempted. Equity demanded that when Samuel Carusi undertook to induce Lewis Carusi to ~~extend~~ some further assurance the more effectualy to settle his estate, and had that assurance prepared for his execution, he should have had it prepared in a form properly setting out the real beneficiaries for whom he professed to act. Even if he had not been already a trustee to convey this property to these beneficiaries, his agency in this matter would have raised a trust for their benefit. The very fact that in the event of a failure of these papers to have the desired effect, Samuel could lay claim to the property as heir-at-law, made it incumbent upon him to be more than ordinarily careful in their preparation. *Samuel Carusi had actual notice from Flood that this deed was not in proper form, and refused to have it changed when so requested.* Neither as grantee, appointee or heir, can Samuel Carusi, in equity, sustain a title to this property.

Huyuenin vs. *Bailey*, 14 Vesey, 273;
Bulkley vs. *Wilford*, 2 Clark and Fininelly, 102;
Seagrave vs. *Kerwin*, Beatly, 157;
Manny vs. *Williams*, 22 Beavan, 452;
Jenkins vs. *Eldredge*, 3 Story, 289;
Burge vs. *Birnily*, 10 Peters, 281;
Morris vs. *Nixon*, 1 Howard, 128;
Sweet vs. *Taconey*, 6 Paige, 359, 364;
Walden vs. *Skinner*, 101 U. S., 577.

However fair and honorable the original ~~notice~~ motive of Samuel Carusi may have been, he could not retain any advantage thus gained.

Jenknis vs. *Eldredge*, 3 Story, 290–292.
Morris vs. *Nixon*, *suprar.*

W. B. WEBB,
ROBERTSON HOWARD,
Counsel for Appellants.

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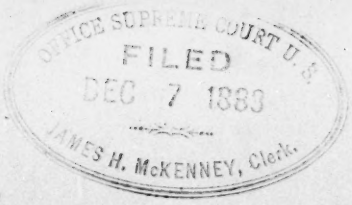

Supreme Court of the United States

OCTOBER TERM, 1883.

ISOLENA E. HOWARD, *Appellant*,
vs.
ADELIADE SOPHIA CARUSI, JOHN McLEAN CARUSI, PHILIPPA ESTELLE CAULFIELD, SAMUEL POLANDO CARUSI, THORNTON CARUSI, AND GENEVIEVE E. CARUSI. } No. 153.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF L. G. HINE, COUNSEL

:FOR:

ADELIADE, SAMUEL AND THORNTON CARUSI.

execution of the power reserved to Lewis by the deed of trust. The case is realy plainer—for after the creation of the trust, Samuel appointed a trustee to convey to persons designated in a certain manner, could not obtain a designation of himself, as he is shown to have attempted. Equity demanded that when Samuel Carusi undertook to induce Lewis Carusi to extend some further assurance the more effectualy to settle his estate, and had that assurance prepared for his execution, he should have had it prepared in a form properly setting out the real beneficiaries for whom he professed to act. Even if he had not been already a trustee to convey this property to these beneficiaries, his agency in this matter would have raised a trust for their benefit. The very fact that in the event of a failure of these papers to have the desired effect, Samuel could lay claim to the property as heir-at-law, made it incumbent upon him to be more than ordinarily careful in their preparation. *Samuel Carusi had actual notice from Flood that this deed was not in proper form, and refused to have it changed when so requested.* Neither as grantee, appointee or heir, can Samuel Carusi, in equity, sustain a title to this property.

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JAMES H. McKENNEY, Clerk.

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No. 153.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief of Counsel for Adelaide, John, Samuel, and Thornton Carusi.

The plaintiff's bill presents the following case: That on 18th March, 1872, Lewis Carusi made his last will, devising his estate in the following words: "And as to all my property, real, personal, and mixed, after payments of my just debts, etc., I give, devise, and bequeath the same to my brother, Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators, and assigns forever, with the hope and trust, however, that he will not diminish the same to a greater extent than may answer for his comfortable support, and at his death the same, or so much thereof as the said Samuel shall not have disposed of

by devise or sale, shall decend to my beloved nieces, Philippa Estelle Caulfield, nee Carusi, Genevieve E. Carusi, and Isolina E. Carusi, as follows: To the said Philippa Estelle Caulfield the sum of five thousand dollars; the remainder of my estate to be divided between the said Genevieve E. Carusi and Isolena E. Carusi, to share and share alike, as tenants-in-common and not as joint tenants; so that they and they alone, shall have the right to have, possess, use, and enjoy the same separate and apart, and independent of any husband either of them may have at the time of my death, or at any time hereafter, and so he or they shall have no right, privilege, or power to control or interfere with any part of my said estate in any manner whatsoever, and so that the same shall not be subject or liable to any debt that any such husband may have incurred." That on 18th July, 1872, said Lewis executed and delivered to the said Samuel a deed conveying to the latter all of his real estate, in trust to manage the same during the grantor's life, with power to sell and to invest the proceeds in securities, to be held in like manner; and in further trust, upon the grantor's death, to convey the unsold real estate and the securities to such person as the grantor "may, by his last will and testament, or other paper writing signed with his name and seal, and witnessed by two witnesses, designate." That the said will, though made previously to the said alleged deed of trust, remained in force thereafter and constituted an appointment under said deed. That on the 17th October, 1872, said Lewis executed, in due form, and delivered to said Samuel, an absolute deed, by which he conveyed to Samuel the same real estate in fee simple, reserving an estate for his own life; but that, at the time of executing this deed, the said Lewis was, by reason of his mind being enfeebled by illness, incapable of understanding its purport, and was procured by said Samuel, and by others aiding him, to execute, acknowledge, and deliver the same, under a belief, fostered by them, that said deed would more effectually carry out the disposition already made, as alleged, by the deed of trust and pre-

vious will; and by means of promises made by Samuel that he would carry into effect the alleged trusts of said deed of trust and will, for the benefit of plaintiff and her sisters. That said Samuel afterwards took possession of, and continued, after the death of said Lewis, to hold as his own the whole of said real estate, and has deceased, having devised all his real estate to his wife for life, with remainder to his sons and daughters equally.

The absolute deed, the will of Lewis Carusi, and the will of Samuel Carusi are annexed as exhibits to the bill, and the acknowledgement of the deed of trust and power of attorney from Lewis to Samuel are proved in the testimony and both papers introduced in evidence.

POINTS.

The plaintiff has not attempted to impeach the absolute deed mentioned in her bill, by showing that Lewis Carusi was incompetent to execute it. Her claim, therefore, rests upon the effect of the deed of trust, which provides for the appointment of the beneficiaries who were to take under that trust, and of the antecedent will as such appointment. In order to support her claim it must appear—

1st. *That the alleged deed of trust took effect by delivery.*

2d. *That the antecedent will constituted the appointment required by the deed of trust.*

3d. *That the oppointment designated the plaintiff and her sisters as the beneficiaries who were to take under the deed.*

4th. *That if they were so designated, such designation was valid.*

Some oral testimony was introduced as to Lewis' declared intentions in reference to the disposition of his property, and the plaintiff seems to rely upon it as an aid. We invert the natural order of argument to first discuss that testimony.

On the part of the defendants, except Genevieve Carusi, it is claimed—

1st. THE ORAL TESTIMONY, IF ADMISSIBLE, UTTERLY FAILS TO SHOW THAT LEWIS HAD ANY SETTLED INTENTION TO GIVE HIS PROPERTY TO HIS THREE NIECES, AS CLAIMED IN THE BILL.

The plaintiff opens her testimony in reference to Lewis' "intentions as to the disposition of his property after his death" by the following declarations: "Well, he always said he intended it for his three nieces—for pa's three daughters; and that he never wanted any one else to have a dollar of it."—(See marginal page 205 of printed record.)

Q. Did your Uncle Lewis Carusi make these declarations to other members of your family besides yourself?

A. Why, yes, sir; certainly. He spoke of it to every one he met—strangers and every one else. It has been known for years.—(Marginal page 207.)

Q. Did your Uncle Lewis Carusi ever speak to you about his will, after he had signed it? And if so, please repeat what he said about it.

A. Why, he often asked me had I seen his will; did I think that money was fixed up—tied so tight that those damned boys would never get a copper of it; and said if he thought they would, well, he would sink it in the Potomac, as he had said a thousand times before.—(Marginal page 209.)

This plaintiff, referring to a conversation she claims to have had with Lewis, says: "We were sitting together, in July; I was telling him about a friend of mine who was coming to see me in the winter, and he said, I shall be gone before then; then you will have a fine time with all your money. I said, I guess not, Uncle Lewis, I don't think I have any money. Yes; he said, you have all—you and Vevie now have all."—(Marginal page 210.)

On cross-examination, this witness says she heard Lewis say, within a year before he died, that he intended to leave his property to her sister, Mrs. Caulfield, until they had some falling-out, when he said he would not leave her any.—(Marginal page 220.)

Q. When was it that you heard your Uncle Lewis say that

he intended to leave his property to Mrs. Caulfield, your sister?

A. Well, sir; I can't tell you the year exactly, but it was all along before they had that falling-out about some business affairs of their own, which I really don't know anything about.—(Marginal page 224.)

This witness also says that Lewis always coupled her sister Genevieve's name with hers in speaking of his disposition of his property, and that Genevieve refuses to join her in this suit.—(See pages 231 and 232.) She also says that she frequently heard her Uncle Lewis tell Miss Nannie Wright that Uncle Nat (another brother of Lewis) had made him promise to leave his girls something, and he intended to do it.—(See page 241.) She thinks this was the year he died.—(Page 244.)

On re-direct examination this witness says: "The day Miss Wright drew that will for Uncle Lewis he said, I will not leave that Caulfield woman one cent—he was angry with her. Miss Wright said, Mr. Lewis, Mrs. Caulfield is your brother's oldest daughter; if you don't leave her something he can never forgive you. Uncle Lewis said, then give her the same as the rest—as Nat's daughters—give her the same as Nat's three daughters."—(See page 248.) He made these declarations, she says, all along. "I have heard them ever since I can remember; heard him tell them to me and to others in my presence, up to the time he died, and then I was over twenty-one."—(See page 250.) "The day Miss Wright drew the will he told her that she must put in $5,000,00 for each of Nat's daughters, because he had promised Nat he would leave them something."—(See page 252.) This witness also testifies that her "Uncle Lewis always said that he desired Mr. Samuel Carusi, his brother, to enjoy the property during his life."—(See page 221.)

Miss Anna M. C. Wright, testifying about conversations she had with Lewis a year or two before his death, says: "He always wanted his property left to his brother during his lifetime—his brother Sam—then, after his death, he

wished it to be divided between his two nieces who were single."—(See marginal page 187.)

Harriet L. Wright testifies that she "never heard Lewis say but one thing: that he intended to leave his property to his brother Samuel during his life, and at his death it was to go to Isolena and Genevieve Carusi," but, she says, she had no conversation with Lewis about his property for two years prior to his death.—(See pages 258 and 259.)

No other witness was introduced by plaintiff as to Lewis' oral declarations of his intentions as to the final distribution of his property.

The plaintiff shows her Uncle Lewis somewhat changeable in his "intentions." First, she says that her Uncle *always* declared he intended his property for her pa's three daughters, and *never* wanted any one else to have a dollar of it; secondly, that he told her in July that she and Vieve (referring to Genevieve) now had all his money; thirdly, that he intended *all along* to leave his property to Mrs. Caulfield, until they had some falling-out about some business affairs; fourthly, that he intended to leave her Uncle Nat's daughters something; fifthly, that he directed Miss Wright, the day she drew his will, to give Mrs. Caulfield and Nat's three daughters each $5000 00; and, finally, she swears that she has heard her Uncle Lewis make these declarations ever since she can remember. All the witnesses concur in stating that he desired to leave his property to his brother Samuel during his lifetime.

It will be observed that in no instance does the oral declarations of Lewis Carusi sustain the claims of the plaintiff as to his intention, as set up in her bill.

In addition to the inferences to be drawn from the above testimony of plaintiff, the following illustrates her credibility and merit. In answer to the question whether her Uncle Lewis, in any of her conversations with him, said anything about providing for her mother, the plaintiff swears: "No, sir; unfortunately Uncle Lewis hated my mother with a deadly hate. He would never have provided

a cent for her.—(See page 228.) Mrs. Caulfield testifies that her mother was on very pleasant and friendly terms with Lewis during his lifetime, and to the moment of his death.—(See page 371.)

John T. Vodery, Lewis' servant, and witness for plaintiff, testifies that "Mrs. Carusi used to give general attention to him. She was in the room often."—(See page 269.)

Plaintiff testifies that her father sent for Miss Wright and told her that she must go and tell Uncle Lewis that he better make this last deed—this deed conveying the property to me, pa said—because, tell him if he makes this deed (explaining to Miss Nannie about the deed) it will strengthen the will.—(See page 213.) Miss Wright denies this.—See page 197.) Plaintiff further testifies that she has no idea how old her Uncle Lewis was when he died; that she don't recollect the age that was put in the papers; that she don't know how old her father was; that some things she recollects perfectly, but other trifles she lets pass.—(See page 235.) Speaking of her father's house before he died, she says: "I left there on the 4th of October, and I have never been home since, not to stay one day or night, and I will never go home again;"—(Page 236;) that she has not discarded her sisters nor her brother Thornton, "but my other brothers I have discarded for many years for their unkind treatment of me. I have never discarded my brother Thornton, and spare him all I can. I could say many things about him that I conceal—many."—(See page 237.) She says there is no cause for estrangement between her and her family except this property.—(See page 245.)

The conduct of Lewis toward Samuel was uninterruptedly fraternal. Even the plaintiff testifies that Lewis in all his declarations said that he desired Samuel to enjoy his property during Samuel's life.—(See page 221.) Edward Austin, a witness for plaintiff, and Lewis' servant, says Lewis seemed very friendly to Samuel all the time, but very changeable to every body else.—(See page 299.) Mrs. Caulfield testifies that Lewis told her a short time before he died

that he intended to leave all his property to Samuel.—(See pages 386 and 387.) Lewis was, when he so stated, walking about the floor.—(See page 287.)

It will be observed that the plaintiff, Isolena, is not corroborated in a material statement by any witness, and that the theory of the plaintiff's bill is overwhelmingly refuted by the testimony of the plaintiff as to the oral declaration of Lewis.

Passing now to the material and more important points of the plaintiff's case, we contend—

2d. THAT THE ALLEGED DEED OF TRUST WAS NOT DELIVERED, AND NEVER TOOK EFFECT.

The following is the only testimony on this point: C. C. Callan testifies he was employed in July, 1872, (more than six years before he testified,) by Samuel Carusi, to prepare the deed, and that it was signed and acknowledged by Lewis in presence of the witness and Samuel and Thornton Carusi, and that after its execution, Samuel "gathered up the deed with some other papers and carried it out of the room. * * * What became of it afterwards I do not know."—(See marginal page 147.)

Q. From whom did Samuel Carusi receive the deed, or by whose consent?

A. He simply took it up off the table after it was completed, and bundled it up with other papers, of which, I suppose, he was custodian, as he had charge of all of Mr. Lewis Carusi's business. I don't know anything about the consent. No objection was raised in my hearing.—(See page 147.)

The plaintiff testifies that in July, 1872, she saw Callan, Samuel, Lewis, and Thornton in the house. "The last time I went to the head of the stairs and looked down, I saw pa coming up from the parlor, or at least from the direction of the parlor, with some papers, an inkstand and a pen in his hand. Pa went into his own room and closed the door."—(See page 312.)

That in July, Lewis asked her if she had seen that deed, and to tell Sam to show it to her.—(See page 210.)

The above is all the testimony tending to prove a delivery of the deed of trust.

The credibility of the plaintiff has been heretofore discussed.

On cross-examination, Callan says: "There was no other paper on the table at the time of the execution of the deed of trust."—(See page 156.) On being asked if he did not take the acknowledgement of Lewis to some other paper at the same time, he says: "I am under the impression I did. What it was, I don't distinctly recollect—what it was, or its terms. * * * My impression is that Mr. Samuel Carusi took all the papers. I think the other paper was a power of attorney referred to in the deed of trust."—(See page 159 and 160.)

His excuse for his clear recollection of the deed of trust and shadowy recollection as to the power of attorney is, "I recollect the circumstances referred to, because I have spoken of it some years ago, and kept it alive in my memory by recent conversation, while the power of attorney has never been a matter of discussion."—(Page 165.) He says he may have taken Lewis Carusi's acknowledgment to it, but he can't say in whose presence; but if he took it, it was where he took the acknowledgement of the deed of trust, and in presence of the same parties, and if he took the acknowledgement of both the power of attorney and the deed, "they must necessarily have been executed at the same time," and that he took several hundred acknowledgements every year before and during the year 1872.—(See pages 166 to 169.)

The power of attorney was shown this witness, whereupon, after inspecting it, he says it was drawn by him about the time it bears date, but "was acknowledged as of the date it bears at the same time as the deed of trust.—(See page 171.)

The date of the acknowledgement of the power of attor-

ney is July 15, 1872, and of the deed of trust is July 18th, 1872. The witness, however, certifies, under his official oath, that they were acknowledged before him at the above dates, respectively. Witness thinks he affixed the revenue stamps to both papers.—(See page 173.) Referring to a conversation the witness had a few days before he testified, with John McLean Carusi, he says: "I told him I laid the deed in front of Lewis Carusi, on the table."—(See page 155.) And before the power of attorney was shown him, he said: "If it was the same paper that was signed at the same time the deed of trust was, I gave it to Lewis Carusi."—(See page 166.)

The above is all the testimony produced by the complainants as to the delivery of the deed of trust.

For the defence, we have the positive denials in the answers of the delivery of the deed of trust; the fact that it was never filed for record; the positive testimony of Thornton Carusi, who says that Callan wrote Lewis Carusi's name, who then left the room, and he, Thornton, took the deed and power of attorney to Lewis' room, and gave both to him; that Lewis put the deed in his blue box, and the power of attorney in the drawer of his table, and the next time he saw the deed was since Lewis' death, when it was taken out of said blue box by Samuel, with other papers, title deeds, &c., for examination.—(See page 138.)

Miss Wright, a witness for plaintiff, was asked: Do you remember that some time after the execution of the will, Mr. Lewis Carusi made a deed of his property to his brother Samuel? and answered; "In the summer he made some kind of a paper, I don't remember what it was, which he sent to my room for me to read."—(See page 194.)

J. N. Callan, a witness produced by the plaintiffs, and brother of C. C. Callan, above mentioned, testifies that he (referring to C. C. Callan) has had a great deal of domestic trouble, and it has, to a certain extent impaired his recollection; that witness has known him at certain times to be in not exactly as good memory as he is at others; that his

memory during the past four yeers, has been in very bad condition; "four years ago his friends were a little anxious about him in consequence of his domestic troubles. He was then in very bad mental condition, previous to March, 1874. Since that time I have noticed, and his friends have, an improvement in his mental condition.—(See pages 287 to 289.)

C. C. Callan is the only witness who asserts the delivery of this paper, and his testimony is not trustworthy. In the first place, we are asked to believe that, after the lapse of more than six years, he can recall minute details of a scene in which several persons took part, so as to be able to state positively which of these persons took up from a table a particular paper. Such a narrative can be trusted only if uncontradicted, and only when strictly consistent with itself. It must appear that the memory of the witness is perfectly accurate as to other details. Callan's account of the movements of Lewis Carusi during that scene is shown to be incorrect. Again, it was not natural that a power of attorney to act for him, and a deed of trust which made that power a nullity, should be delivered at the same time. On the other hand, Callan's statement is directly contradicted by that of Thornton Carusi. Next, the testimony of Miss Nannie Wright, as to a paper, executed at that time, being sent to her by Lewis Carusi for examination, shows an extreme probability that the paper so sent was the deed of trust, and therefore that this deed had remained, just as Thornton Carusi states that it did, in Lewis Carusi's possession, and had not been delivered. Finally, Callan's memory is shown by his his own brother not to have been trustworthy.

3d. IF IT SHOULD BE FOUND THAT THE DEED OF TRUST DID TAKE EFFECT BY DELIVERY, THE EXISTING WILL WAS THEREBY REVOKED, AND, THEREFORE, DID NOT CONSTITUTE AN APPOINTMENT UNDER IT.

The rule stated by Kent (vol. 4, p. 528) was adopted by

the Supreme Court of the United States in Bosely vs. Bosely's Exs., 14 How., 390. It was there laid down "that *the same interest* which the testator had when he made his will should continue to be the same interest, and *remain unaltered* to his death, and that the least alteration in that interest is a revocation."

It is to be observed that Bosely's case was from Maryland, and was a construction of the very statute before us. The ground of this rule has been differently explained. In some cases it is said to be that the alteration of the estate is evidence of a change of purpose on the part of the testator; in others it is said that a revocation results because the testator is deprived of the estate, so that nothing is left for the will to operate on.—(4 Kent, 528.)

In the case at bar the alteration of estate was not merely technical; it was material. The plaintiff has asserted in her bill that it was so complete that Lewis Carusi had nothing to convey when he made the absolute deed of 17th October, 1872. While we deny that proposition, it is sufficient to say that, when he made his will, he had a legal estate in fee, and that the deed of trust, if it took effect, divested him of this irrevocably. The only interest that remained in him was by resulting trust until he should make an appointment.

The will could no longer operate by way of devise; the beneficiary must take under the deed; or rather, by conveyance from the trustee.—(See remarks of Mr. Justice Swayne in *Ould vs. Washington Hospital*, 95 U. S., 312. *Hussy's Case*, Moore's Cases, 789; recognised in Mayor of *Baltimore vs. Williams*, 6 Md., 235.) In *Hussey's Case* it was held that the antecedent will is revoked as a will, even when specifically referred to in the deed of trust as containing a declaration of the trust. It can only operate as if part of the deed.

The cases in which it has been held, on the other hand, that a deed did not revoke an existing will, went on the ground that the deed had not altered the estate. For ex-

ample, a mortgage, or a deed of trust to pay debts, have the effect to charge the estate with a lien, but not to alter it; and for that reason have been held not to revoke a will.

And in *Hughes vs. Hughes*, 2 Munf., 209, it was held that a conveyance in trust during the life of the grantor, leaving the fee in him by reversion, did not revoke a previous devise. While this was a departure from the strict rule, the principle of that rule was distinctly recognized. It was admitted that an alteration of the estate devised would revoke the devise; but it was held that a conveyance for the life of the grantor did not alter his estate at the time of his death. It is immaterial whether this latter proposition be true or not.

It has been held, too, that a surrender of copyhold does not revoke an existing will.—(*Spring vs. Byles*, 1 T. Rep., 435.) But this also was on the ground that the estate was not altered by a mere surrender, and the case only confirms the general rule of law. Coke (Copyholds, sec. 39) says: "A surrender (where, by a subsequent admittance the grant is to receive its perfecture and confirmation) is rather a manifesting of the grantor's *intention* than *passing away any interest* in the possession; for, till admittance, the lord taketh notice of the grantor as his tenant, and he shall receive the profits of the land to his own use, and shall discharge all services due to the lord." And in *Doe ex. dem. Shewen vs. Roat*, 5 East, 132, the court said: "Till admittance *the legal estate continues in the surrenderer* and descends to the heir." In a word, a surrender had no more effect on the legal estate than a letter announcing the tenant's intention to transfer his holding would have had.

There are, then, no cases in which an alteration of the estate has not been held to be a revocation.

4th. IF THE WILL OF 18 MARCH, 1872, REMAINED IN FORCE AFTER THE EXECUTION OF THE DEED OF TRUST, AND THIS COURT HAD JURISDICTION TO SET IT UP, IT WOULD GIVE NOTHING TO THE PLAINTIFF.

The designation on which the plaintiff relies is contained in the following clause: "As to all my property, real, personal, and mixed, * * I give, devise, and bequeath the same to my brother, Samuel Carusi, to be held, used, and enjoyed *by him, his heirs, executors, administrators, and assigns forever*, with the hope and trust, however, that he will not diminish the same to a greater extent that may answer for his comfortable support, and at his death the same, or so much thereof as the said Samuel *shall not have disposed of by devise or sale*, shall descend to my nieces, &c.

It is unnecessary to argue the question, whether the devising words of this clause, taken alone, give a fee simple. There has never been any contest as to the meaning of such words.—(See Redf. on Wills, vol. 2, p. 326.)

But it may be claimed that the "hope and trust" contained in the same clause are precatory words which effect the estate so devised. We, have, therefore, to consider how such words may operate, and whether the rule concerning them applies at all to the devise before us.

It is the office of precatory words to prescribe an affirmative, active duty, which the devisee is to perform in disposing of the estate devised to him. In other words, they operate by converting him into a trustee, and they define his trust, and point out the beneficiaries.—(See Story's Eq., §1,068.) But in the case at bar the words of hope and trust do not point out, or in any way relate to, any particular use or disposition of the estate devised to Samuel Carusi. They do not pretend to furnish any suggestion as to *how* he should dispose of the property; they merely express a hope that he should not unnecessarily consume it. No doubt they were intended to operate as a restraint, but there is no clue by which they can be construed to establish a trust.

It may be claimed that these words are to be connected with the subsequent direction that, at Samuel Carusi's death, so much of the property as he should not have disposed of should descend to the two neices; and that, when so connected, they establish a trust for *them*. But it is to be observed that the testator did not leave that disposition to be made by Samuel Carusi; he made it directly himself. Instead of being charged with any duty in that matter, Samuel Carusi was entirely left out of all connection with it.

The provision for the neices of the testator was *a direct limitation over*, not to be executed by the first taker. With that limitation we shall deal in its proper place. It is enough for the present to show that the devisee was not charged with any trust by the hope that he would not unnecessarily consume the property.

But if these so-called precatory words had actually amounted to a request that Samuel Carusi should devise the property to his two daughters, they would still fail to charge him with a trust; for precatory words never create a trust where the devisee is clothed with absolute power to dispose of the property as he pleases. We have first to point out that Samuel Carusi was thus invested with absolute power of disposal.

Any form of words from which the testator's intention that the devisee may sell or devise may be implied is sufficient to give power. In *Jackson vs. Bull*, 10 Johns., 20, where the limitation over was of such property as the first taker should "die possessed of," it was held that the latter words gave power to alienate. In *Ramsdell vs. Ramsdell*, 21 Maine, 296, it was said "that it was the intention to authorize her (the devisee) to dispose of the property * * is clearly implied in the words 'if any remains.'" So in *Melson vs. Cooper*, 4 Leigh, 408, where the devise was to W and his heirs, and it he should die without a son, "and not sell the land," then to G, it was held that power to sell was given; and in *Riddle vs. Cahover*, 4 Rand., 547, the same effect was given to the words, "what shall be left." (See also

Pope vs. Pope, 10 Simons, 1, where the words were "what property there may be."

In view of these authorities there can be no doubt that Samuel Carusi took a fee, with absolute power to dispose of the estate in any way he chose.

It is abundantly established by the authorities that, in such a case, words of request have no binding power, and, therefore, do not create a trust. In *Meredith vs. Heneage*, 1 Simons, 542, where the gift was "unfettered and unlimited," but was coupled with strong words of recommendation, it was held by the House of Lords that no trust was created. These words were precisely equivalent to words giving absolute power of disposal. In *Knight vs. Knight*, 3 Beavan, 172, the Master of the rolls (Lord Langdale) laid down the rule for determining whether precatory words created a trust, and said: "If the giver accompanies his expression of a wish by other words, from which it is to be collected that he did not intend the wish to be imperative, or if it appears from the context that the first taker was intended to have *a discretionary power to withdraw any part of the subject from the object of the wish or request.* * * * it has been held that no trust has been created." In *Johnston vs. Rowlands*, De Gex & Smale's Rep., 336, there was a gift to a wife, "to be disposed of by her will in such way as she should think proper;" but it was coupled with the strongest words of recommendation as to such disposal. Vice Chancellor Shadwell said: "That the word 'recommend' may amount to a command in a particular instance, and may create a binding trust, is certain. It is equally certain that the word is susceptible of a different interpretation; of an interpretation consistent with the legal and equitable power of the person recommended, to defeat the recommendation." Accordingly the donee was held to have the gift free from any trust. So, also, a devise to a wife at her sole and entire disposal, but with a recommendation, was held to give an absolute estate, free from trust. But the most important authority is that of *Negroes Chase vs. Plummer*, 17 Md., 176,

where the principle was stated to be, that words of request "are deemed to be flexible in character, *and must yield* if the imputed interpretations be * * *so inconsistent with the other provisions in the will that both cannot stand together.*" Precatory words do not control, but are controlled by other provisions.

It may be added that the whole doctrine of recommendatory trusts has fallen into disrepute. Story says: "In more modern times a strong disposition has been indicated not to extend the doctrine of recommendatory trusts; but, as far as the authorities will allow, to give to the words of wills their natural and ordinary sense, unless it is *clear* that they are designed to be used in a peremptory sense." He then sums up the restrictions of the later cases, as follows: "Wherever, therefore, the objects of the supposed recommendatory trust are not certain or definite; whenever the property to which it is to attach is not certain or definite; whenever a clear discretion and choice to act, or not to act, is given; whenever the prior dispositions of the property *import absolute and uncontrollable ownership;* in all such cases courts of equity will not create a trust from words of this character."—(Com. on Eq., § 1,609, 1,070.)

It has been demonstrated, then, that no trust exists in this cause, by reason of any request: first, because the hope and trust expressed in the will does not pretend to prescribe or point out anything to be done with the estate by Samuel Carusi; secondly, because the testator gave him absolute and uncontrollable power to dispose of the whole property.

In stating the first of these reasons, we have pointed out that Lewis Carusi's will did not intend that his nieces should take any estate by any act of the first devisee. This brings us to the consideration of the next point:

5th. As a matter of construction, it is plain that whatever estate the will attempted to give to Isolena and Genevieve Carusi was by way of executory devise. Such an executory devise is void.

An executory devise may exist "where the devisor parts

with his whole estate, but, *upon some contingency, qualifies the disposition of it*, and limits an estate upon that contingency." —(4 Kent, 268.) For example, "a fee may be limited after a fee, as in the case of a devise of land to B in fee, and if he dies without issue, or before the age of twenty-one, then to C in fee."—(Ib., 270.)

But a failure to exercise that power of ownership with which the devisee is clothed by the law itself, is not and cannot be treated as a contingency. "If property is limited directly to, or to the use of, a person instead of being limited to uses to be appointed by the exercise of a power, *it cannot be limited over* in the event of such person *not exercising that power over it with which he is clothed by the law itself*, as an incident of property."—(Fearne, sec. 667, vol. 2, p. 354.)

Stated in another aspect, the principle is, that a limitation over, in case the devisee fails to dispose of the property by sale or devise, instead of *qualifying* the fee that is devised, recognizes the fact that it is an *absolute and unqualified* estate in fee, and that, therefore, nothing is left in the testator, to be disposed of to another person.

Kent says: "If there be an absolute power of disposition given by the will to the first taker; as, if an estate be devised to A in fee, and if he dies *possessed* of the property without lawful issue, the remainder over, or remainder over of the property which he, dying without heirs, should *leave*, or without *selling or devising* the same; in all such cases the remainder over is void as a remainder, because of the preceding fee: and it is void by way of executory devise, because the limitation is inconsistent with the absolute estate, or power of disposition expressly given, or necessarily implied by the will. A valid executory devise cannot subsist under an absolute power of disposition in the first taker." —(4 Kent, 271.)

In addition to the authority of these unquestioned text-writers, the following are selected from the numerous English and American cases which have affirmed this rule.

In *Jackson vs. Bull*, 10 Johns., 19, the devise was to M

and to his heirs and assigns forever, and in case M "should die without lawful issue, the said property he died *possessed of*" was to go to Y. It was held: "The limitation over must be considered void. Whether it would have been void, as applying to an indefinate failure of issue, by means of which the devisee would take an estate tail, (which with us is turned into an estate in fee,) is a question we need not now discuss; for it is void on other ground, as being repugnant to an absolute control over the estate, which the testator intended to give." And in *Jackson vs Livingston*, 15 Johns., 169, it was held, that "where A devises all his estate to B, his wife, her executors, administrators, and assigns, but in case of B's death, without disposing of it by will or otherwise, then to his daughter, B takes under the devise the entire fee, and the subsequent limitation to the daughter is consequently void."

In *Ide vs. Ide*, 5 Mass., 504, it was held: "Whenever it is the clear intention of the testator that the devisee shall have an absolute property in the estate devised, a limitation over is void. * * * And a right in the first taker to dispose of the estate at his pleasure, and not a mere power of specifying who may take, amounts to an *unqualified* gift." Affirmed in *Burbank vs. Whitney*, 24 Pick., 154, 5.

In *Ramsdell, vs. Ramsdell*, 21 Maine, 293, the court said: "If estates be divised or property bequeathed to a person, with or without words of inheritance, and with an absolute right to sell and appropriate the proceeds at pleasure to his own use, it is not perceived how there can be at the same time a vested interest imparted to another in the same estate or property. Such full dominion in the devisee or legatee is inconsistant with, and destructive of, all other rights. For one cannot, according to the rules of sound reasoning, have any rights in that which another can at the same time appropriate at his own pleasure entirely and exclusively to himself."

In *Hall vs. Robinson*, 3 Jones' Eq., (3 Nor. Car.,) 349, the devise was to L and his heirs forever, but over in case he

should die *intestate* and without issue. The devise over was held good, because the power of disposal was not general. It could be exercised only by will. But the principle above stated was fully recognized and very perfectly explained. The court said; "Where a fee is limited upon a fee by way of executory devise or bequest, if a *general* right to dispose of the property is given to the taker of the first fee, such right is inconsistent with the existence of the second fee, and the consequence is that the limitation over of the second fee is inoperative and void. * * * The rule above stated requires that the right of disposition given to the first taker shall be *general*, so as to be, to all intents and purposes, inconsistent with any estate or interest in the second taker. Here the right of disposition is *limited*. It can only be made in one mode, to wit, by will. So that the entire estate of the testatrix was not consumed by the gift to the first taker. There was left an interest, or possibility of an interest, depending on the uncertain event of the first taker dying before he arrived at age, or, after he arrived at age, without issue and without making a will; which possibility of interest the testatrix could limit over to third persons, under the doctrine of executory bequests. * * There is no inconsistency between the existence of this contingent estate and the estate of the first taker; for, in order to make an absolute inconsistency, which the rule requires, the first taker must have the absolute estate, or a *general* power of disposition, so as to leave nothing in the testatrix capable of being given over to a third person."

The strictness of the position taken in this case only strengthens the claim that no estate was left in the present case to be disposed of, after the devise to Samuel Carusi. He had power both to sell or devise.

In *McRee's Adm vs. Means*, 34 Ala., 372, the court said, after citing numerous cases: "The citation of these cases, and the reasoning upon which they proceed, are abundantly sufficient to show that the absolute power of disposition in the first taker, to which a limitation over is repugnant, is a

power to dispose of the entire estate, including the limitation, and in distruction of the limitation."

And in *Cook vs. Walker*, 15 Geo., 462, it was said, that "the unlimited power of disposition in the first taker * * is, *ipso facto*, a destruction of the executory limitation whether the power be exercised or not."

The plaintiff cannot escape from these cases by a theory that only a life estate was devised to Samuel Carusi, with only such power of disposition as should be consistent with such an estate. The language of the will, which describes the devise as an estate in fee, and the terms of the power to dispose, which authorize him either to sell or devise the whole estate, forbid any such construction. Even where the estate devised is not defined in terms to be a fee, and the construction turns upon the amount of power of disposition, the courts have uniformly refused to reduce the first taker to a life estate, in order to sustain the limitation over.

In *Ramsdell vs. Ramsdell*, 21 Maine, 296 the court said: "It cannot be reasonably supposed, nor do the decided cases admit, that it could be the intention of the testator to give only an estate for life, unless there be words clearly declaring such an intention, *when he gave the unqualified and absolute right to dispose of the entire property at pleasure.*"

Mem. The questions of law so far presented involve—

1st. The will of Lewis Carusi of date 18th of March, 1872, by which he devised all his estate to his "brother Samuel Carusi, to be held, used, and enjoyed by him, his heirs, executors, administrators and assigns forever"; and, after expressing the hope and trust "that he will not diminish the same to a greater extent than may be necessary for his comfortable support and maintenance," provides that at his, (Samuel's,) death, the same, "or so much thereof as he, said Samuel, shall not have disposed of by devise or sale, shall descend" to the testators three nieces, (Samuel's three daughters,) including the complainant.

2d. The deed of trust of date 18th July, 1872, whereby, (if it be found to have been executed by delivery,) a present

estate, with legal seisin, passed to Samuel with absolute power *to sell and convey the whole or any part* of the property *at his discretion*, reserving to the grantor only the power to appoint by will, or other paper writing, somebody to whom Samuel should convey, on the death of Lewis, whatever should then be left of the estate.

The will gave Samuel a freehold estate commencing from the death of Lewis; but the whole estate, with legal seisin, remained in Lewis until the deed of trust, if delivered, divested him so completed that he could do nothing but make an appointment; and it cut Samuel off from any beneficial enjoyment of the estate at any time. So that the status of Lewis and Samuel in relation to the estate under the will, and under the deed was entirely different. Hence the legal effect of the deed of trust was to revoke the will. The two cannot be brought together to act as one instrument. And if they could the plaintiff is in no better position, because Samuel, by will of 23d March, 1877, executed the power conferred upon him by Lewis' will of 18th March 1872, by devising the property. And it is very evident that Lewis did not intend to make the will a part of the deed of trust, because such a unity would have divested him of the power to deal with the property in any way whatever, and in the deed he expressly reserves to himself a power to designate the objects of his bounty in future, by will or *other paper writing* by two persons witnessed.

It has now been demonstrated that the plaintiff could not have taken anything under the deed of trust and will, even if both instruments had been in force at the death of Lewis Carusi, and the will had been established by probate.

This brings us to the other paper writing, to wit, the absolute deed of 17th October, 1872.

THE PAPER WRITING OF 17TH OCTOBER, 1872, IS A REGULAR CONVEYANCE, UNDER SEAL, AND VAGUE EXPRESSIONS UTTERED FROM TIME TO TIME CANNOT BE RECEIVED TO NULLIFY WELL UNDERSTOOD TERMS, AND INTERPOLATE DIFFERENT PROVISIONS.

The allegation that Lewis Carusi was incompetent to exe-

cute that instrument has not been touched in the proofs. That question drops out of the case.

The allegations on which plaintiff appears actually to rely are, first, that Lewis Carusi executed this deed under a belief fostered by Samuel, that it would more effectually carry out the dispositions of the deed of trust and the will. It is difficult to determine whether this means that he supposed that the deed was not absolute on its face, but contained provisions to that effect; or that he was, on the contrary, aware of its form, but relied upon Samuel's carrying out his former dispositions. The bill proceeds, however, to charge that Lewis was led to execute this deed by promises which Samuel had made, that he would carry out those former dispositions.

The case thus presented is intended, it is presumed, to establish a constructive trust in favor of the plaintiff and her sister Genevieve; but it would actually establish only the precise trust contained in the trust deed and the will; and we have shown that those two instruments did not designate the plaintiff and her sister Genevieve as the beneficiaries; but did designate Samuel Carusi.

It follows, then, that the constructive trust to be inferred from the bill would not help the plaintiff in the slightest degree. She stands just as she stood in the deed of trust, and still takes nothing.

She has attempted, however, to establish by the proofs a specific understanding between the grantor and grantee, that *she and her sister* were to be the actual beneficiaries of the grant.

Now, it is to be observed that, as this understanding is wholly different from an understanding that the disposition of the deed of trust and will should be carried out, because it designates beneficiaries not designated in those instruments, it constitutes a case not alleged in the bill, and proof of it cannot be heard or received.

The rule concerning the establishment of resulting and constructive trusts is very strict. It is laid down that "the